

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND
UPTOWN PARTNERSHIP, INC.**

This Agreement [Agreement] is entered into by the City of San Diego, a municipal corporation [City] and Uptown Partnership, Inc. [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, the City Council designated specific geographic areas (Uptown Community Plan Area, Hillcrest Business Improvement District, and Mission Hills Business Improvement District) as the Uptown Community Parking District [District]; and

WHEREAS, on December 2, 1997, the City Council adopted Resolution No. R-289521, in which the City Council designated Contractor as the Advisory Board for the District; and

WHEREAS, on _____, _____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2008 to be carried out by Contractor;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I - INCORPORATION OF RECITALS

- 1.1 The Recitals set forth above are true and correct, and are hereby incorporated in full and made a part of this Agreement by this reference.

ARTICLE II - DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

- 2.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.

- 2.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in Exhibit B.
- 2.3 Plan Revenue – All revenue that accrues to Contractor as a result of its receipt of funds provided under this Agreement, including interest earned on these funds deposited in an interest bearing account.
- 2.4 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under this Agreement.

ARTICLE III – EFFECTIVE DATE; TERM OF AGREEMENT

- 3.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2007 and continue for one year until June 30, 2008, unless terminated earlier in accordance with the terms of this Agreement.
- 3.2 This Agreement may be extended for up to ninety additional calendar days, pursuant to Section 20.5 below.
- 3.3 Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

ARTICLE IV – CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE

- 4.1 The City's Economic Development Division [Division] is the contract administrator for this Agreement. The City will identify a designated representative for the purposes of this Agreement.
- 4.2 The City's designated representative shall communicate with Contractor on all matters related to the administration of this Agreement and Contractor's performance of its obligations and duties rendered hereunder. Contractor shall work solely under the direction of the City's designated representative in performing Contractor's obligations and duties under this Agreement.
- 4.3 When this Agreement refers to communications to or with the City, those communications shall be with the designated representative, unless the designated representative or the Agreement specifies otherwise. When this Agreement refers to an act or approval to be performed by the City, that act or approval shall be performed by the Mayor (or his designee), unless the Agreement specifies otherwise.

- 4.4 The City, at its sole discretion, may change its designated representative at any time, and if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending change.

**ARTICLE V – INDEPENDENT CONTRACTOR; ASSIGNMENT;
DESIGNATED REPRESENTATIVE**

- 5.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Contractor shall follow the direction of the City concerning the end results of the performance. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.
- 5.2 Because this Agreement is entered into by the City in reliance upon Contractor's qualifications, experience, and personnel identified, Contractor shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any assignment in violation of this Section is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.
- 5.3 Contractor shall identify a designated representative for the purposes of this Agreement. In the event Contractor changes its designated representative for the purposes of this Agreement, Contractor shall notify the City of the new designated representative within ten calendar days of the date of such change.

ARTICLE VI - OBLIGATIONS OF CONTRACTOR

- 6.1 Contractor shall perform the services described in the Scope of Services (Exhibit A), in accordance with the Plan Budget (Exhibit B) and all other terms and conditions of this Agreement.

- 6.2 The Scope of Services (Exhibit A) shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

**ARTICLE VII – PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT;
PLAN REVENUE**

7.1 PLAN BUDGET AND EXPENDITURES.

- 7.1.1 The Plan Budget (Exhibit B) shall be in sufficient detail to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.
- 7.1.2 Funds provided by the City to Contractor under this Agreement may be used only for staffing, education and outreach, general operations, research activities (including Subcontractor expenses), design and engineering expenses, and other reasonable and appropriate costs related to Contractor's services listed in the Scope of Services (Exhibit A) and the Plan Budget (Exhibit B). Any reimbursable expenditures incurred by Contractor shall be essential to the proper and efficient performance of those services required by this Agreement and shall fall within the prescribed limitations of this Section, the Operating Manual, and applicable laws, rules, and regulations governing this Agreement. Any other expenditures, including travel, meals, lodging, and entertainment costs, or any alcoholic beverages, will not be reimbursable under this Agreement and shall be borne solely by Contractor.
- 7.1.3 The City will not reimburse Contractor for, and Contractor shall not request reimbursement for, any expenditure that is ineligible under, this Agreement, the Plan Budget (Exhibit B), the Operating Manual, and/or Counsel Policy 100-18.
- 7.1.4 Contractor shall not use the funds provided under this Agreement in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

7.2 ADVANCES.

- 7.2.1 At the written request of Contractor, the City may make an advance payment to Contractor in an amount not to exceed \$90,000 to meet the cost of salaries and operating expenses during the first eight weeks of Contractor's performance under this Agreement. Repayment of such an advance may be charged by the City against the last two months of submitted reimbursement requests. The City will, at its sole discretion, either require Contractor to return any unexpended funds from the advance payment to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to

transfer any unexpended funds from the advance to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unexpended funds from the advance payment upon the termination date of this Agreement.

- 7.2.2 At the written request of Contractor, the City may, on a monthly basis, provide parking meter cards and/or deposit reload time (in dollars) onto Contractor's parking meter card reload time dispenser, with a total value not to exceed \$25,000 per month. Contractor acknowledges that any provision of parking meter cards, reload time (in dollars), and/or the proceeds from the sale of such cards and/or reload time is an advance to Contractor of funds under this Agreement, which Contractor shall only use to pay for eligible expenditures made in connection with this Agreement. The City will, at its sole discretion, either require Contractor to return any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time within ten calendar days of the termination date of this Agreement.

- 7.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed \$3,202,091, as set forth in the Plan Budget (Exhibit B). Any amount not expended under this Agreement, shall roll over to the next fiscal year allocation of funds, subject to the City Council's annual review and approval of community parking district implementation plans and authorization of further contracts to administer the District.

- 7.4 **ADDITIONAL FUNDING SOURCES.** If Contractor has received or does receive additional funding for the Plan from a source or sources other than the City, the use of which requires that Contractor make an accounting to, or be subject to, an audit by such other source, then Contractor shall charge Plan expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

- 7.5 **PAYMENT SCHEDULE.**

- 7.5.1 In the event Contractor accrues cash advances and/or proceeds from the sale of parking meter cards and/or reload time (in dollars) in an amount that exceeds \$100,000, Contractor shall apply cash advances and/or proceeds from the sale of parking meter cards and/or reload time toward eligible expenditures, before

requesting from the City any additional parking meter cards, reload time, or reimbursement for eligible expenditures.

- 7.5.2 Contractor shall not accrue parking meter cards, reload time (in dollars) or any combination thereof, in an amount that exceeds \$30,000.
- 7.5.3 Contractor shall request reimbursement from the City no more than once per month during the term of this Agreement.
- 7.5.4 Contractor shall, by the fifteenth day of each month, submit to the City a report (original plus one copy) documenting Contractor's activities, income, and expenditures for the preceding month, along with copies of all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed, as described in the Operating Manual. In addition, Contractor shall specify in the report the amount of expenditures requested for reimbursement. Contractor shall ensure that each report states: "Contractor certifies that staff time expended and expenses submitted are for services performed in accordance with the provisions of Contractor's Community Parking District Agreement with the City," and that the report is signed by an officer of Contractor.
- 7.5.5 Any expenditure contained in the report described in Section 7.5.4 above that is not consistent with the Plan Budget (Exhibit B), or is not supported with proper documentation as described in Section 7.5.4 above, shall be considered an ineligible expenditure.
- 7.5.6 Within thirty calendar days of the City's receipt of a properly completed Reimbursement Request from Contractor, the City will verify the eligibility of each expenditure described in the Reimbursement Request, and reimburse Contractor for all eligible expenditures (as described in Section 7.1.2 above), less those eligible expenditures already paid for by Contractor with the proceeds from the sale of parking meter cards and/or reload time (pursuant to Section 7.5.1 above), and less any expenditures deemed ineligible by the City but already paid for by Contractor with such proceeds.
- 7.5.7 The City will withhold the final payment to Contractor until Contractor has accounted for the cash advance, parking meter cards, reload time (in dollars), *proceeds from the sale of such cards and reload time*, as well as all expenditures made by Contractor in connection with this Agreement, and Contractor has submitted to the City a Final Report (and any other reports requested by the City) summarizing the services performed by Contractor pursuant to this Agreement, notwithstanding the provisions of Section 7.2 above.

7.6 **DIRECT PAYMENTS**

- 7.6.1 The City may, at its sole discretion, make a direct payment from Contractor's Community Parking District Revenue Fund [CPD Revenue Fund] on behalf of Contractor for expenses in excess of \$5,000 to facilitate capital improvement projects.
- 7.6.2 The City may, at the written request of Contractor, execute an interfund transfer (or other action) to effect payment from Contractor's CPD Revenue Fund to another City fund for eligible expenses, such as the purchase of parking meter cards and refill time.
- 7.6.3 The City may, at the written request of Contractor, make a direct payment from Contractor's CPD Revenue Fund to a Subcontractor for eligible expenses, provided:
 - a) the amount of the direct payment exceeds fifty percent of Contractor's outstanding advance; and
 - b) the subcontract, furnished to the City, complies with the requirements set forth in Article XVI below.

7.7 **PLAN REVENUE.** It is anticipated that some of Contractor's services (including capital improvement projects) may generate substantial Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:

- a) to repay any debt incurred and/or secured by the specific project that generates the revenue;
- b) to pay for operational costs of the project;
- c) to pay for maintenance costs of the project; and/or
- d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services (Exhibit A) and Plan Budget (Exhibit B).

Contractor shall account for Plan Revenue separately in the account established pursuant to Section 8.2 below. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

7.8 **BUDGET ADJUSTMENTS.** Contractor shall have authority to adjust the line items of its Plan Budget (Exhibit B) by up to five percent per line without securing prior City approval. Any Plan Budget adjustment greater than five percent shall be considered an Amendment to this Agreement and requires City approval, as provided in Section 20.5 below.

ARTICLE VIII - DATA AND RECORDS

- 8.1 **GENERAL.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) during the term of this Agreement.
- 8.2 **ACCOUNTING RECORDS.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Plan-related accounting records, documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.
- 8.3 **INSPECTION AND PHOTOCOPYING.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Plan-related data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties under this Agreement. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law.
- 8.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration date of this Agreement. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or its authorized agents, to examine all such data and records, for the purposes described in Sections 8.2 and 8.3 above. After the storage period has expired, or all audit findings have been resolved, whichever is later, Contractor shall provide the City with thirty calendar days written notice of its intent to dispose of any Plan-related data and/or records.
- 8.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by the City, the originals of all such data and records to the City. Contractor may retain copies of all data and records delivered to the City.

- 8.6 **OWNERSHIP OF DOCUMENTS.** Once Contractor has received any reimbursement from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of the City. The City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Plan, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

ARTICLE IX – AUDITS; FINANCIAL DISCLOSURES; OTHER REPORTS

- 9.1 **AUDITS.** Contractor shall ensure that Annual Single Audits and Financial Statement Audits are completed by a Certified Public Accountant. Individual projects funded by the City shall be clearly identified in the audit reports, as well as the dollar amount allocated to the Plan by the City.
- 9.1.1 In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, Contractors expending \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year, shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Contractor shall ensure that Single Audits are completed within 180 calendar days of the expiration date of this Agreement. Contractors completing audits by calendar year (rather than fiscal year) shall ensure that Single Audits are completed within 180 calendar days of December 31st. Contractor shall provide the City with a copy of the Single Audit within fifteen calendar days of Contractor's receipt of the audit.
- 9.1.2 Contractors receiving \$75,000 or more in federal, state, and/or City funds shall have Financial Statement Audits prepared in accordance with GAAP and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards [GAAS]. This audit shall include the following statements:
- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts;
 - b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor; and
 - c) a statement certifying compliance with all terms and conditions of the City's contract with Contractor, and that all required reports and disclosures have been submitted, completed by an executive officer of Contractor.

Contractor shall provide the City a copy of the Financial Statement Audit within 150 calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

- 9.1.3 If Contractor is subject to an audit from a source other than the City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s).

9.2 **FINANCIAL DISCLOSURES.** Contractors receiving \$10,000 or more, but less than \$75,000, in federal, state, and/or City funds shall provide the City copies of true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year. Specifically, Contractor shall submit the following:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts; and
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor.

Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

9.3 **OTHER REPORTS**

9.3.1 Contractors receiving less than \$10,000 in federal, state, and/or City funds shall provide a report of how the funds were used during the contract period. Contractor shall provide the City with a copy of this report within thirty calendar days of the expiration date of this Agreement. If Contractor is also in receipt of an Annual Single Audit or Financial Statement Audit, Contractor shall submit a copy of such audit to the City within fifteen calendar days of Contractor's receipt of the audit.

9.3.2 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date, a narrative of proposed activities for the coming fiscal year, as well as a proposed budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).

9.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals, accomplishments, and expenditures for Fiscal Year 2008. The report shall be delivered to the City by November 30, 2008.

ARTICLE X – COMPLIANCE WITH LAWS AND POLICIES

10.1 **GENERAL.** Contractor shall comply, and require each of its Subcontractors to comply, with all applicable laws, rules, regulations, ordinances, resolutions, permits, and policies of the federal, state, and local governments, as they pertain to this Agreement. In addition, Contractor shall immediately comply, and require each of its Subcontractors to immediately comply, with all directives issued by the City, or its authorized representatives, under authority of any law, statute, ordinance, rule, or regulation.

10.2 **CONFLICT OF INTEREST.**

10.2.1 Contractor shall comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:

- a) California Government Code sections 1090 et. seq., and 81000 et. seq.;
- b) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
- c) The City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
- d) The "CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NON-PROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO" (Exhibit C).

10.2.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.

10.2.3 If, in performing its obligations and duties set forth in this Agreement, Contractor makes, or participates in, a "governmental decision," as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City that would otherwise be performed by a City employee holding a position specified in the City's conflict of interest regulations, Contractor shall be subject to the City's conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing Contractor's relevant financial interests.

10.2.3.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that Contractor is subject to the City's conflict of interest regulations. Contractor shall also file a Form 700 (Annual Statement) on or before April 1,

002184

disclosing any financial interests held during the previous calendar year for which Contractor was subject to the City's conflict of interest regulations.

10.2.3.2 If the City requires Contractor to file a statement of economic interests as a result of Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall be considered a "City Official," subject to the provisions of the City's Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

10.2.4 Contractor shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.

10.2.5 Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.2.6 If Contractor violates any conflict of interest law, or any of the provisions of Section 10.2 of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit C. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as a result of the violation.

10.3 **EQUAL EMPLOYMENT OPPORTUNITY.**

10.3.1 Contractor shall comply, and require its Subcontractors to comply, with the City's Equal Employment Opportunity [EEO] Outreach Program, codified in San Diego Municipal Code sections 22.2701 - 22.2707. Contractor and all of its Subcontractors are individually responsible for abiding by its contents.

10.3.2 Contractor shall comply, and require each of its Subcontractors to comply, with Title VII of the Civil Rights Act of 1964, as amended (Executive Orders 11246, 11375, and 12086), California Fair Employment Practices Act, and any other applicable federal and state laws and/or regulations hereinafter enacted.

10.3.3 Contractor shall not discriminate, and require each of its Subcontractors not to discriminate, on the basis of race, gender, religion, national origin, sexual orientation, age, or disability, in performing any obligation or duty in

002185

connection with this Agreement, including, but not limited to, the provision of services, privileges, facilities, advantages, and accommodations.

- 10.3.4 Contractor, and each of its Subcontractors, shall provide equal opportunity in all employment practices.
- 10.3.5 Contractor shall submit to the City, a current Work Force Report, and if requested by the Equal Opportunity Contracting Program [EOCP] staff, an Equal Employment Opportunity Plan, as required by San Diego Municipal Code section 22.2705.
- 10.3.6 Contractor understands that compliance with the EEO provisions shall be monitored and reviewed by the City's EOCP staff.
- 10.3.7 Contractor's failure to comply with the above requirements, or its submittal of false information in response to these requirements, may result in any of the following: the withholding of progress payments until Contractor complies with the above; termination of this Agreement; debarment; and/or other sanctions, including suspension from participating in future City contracts (as a prime or Subcontractor) for a period of not less than one year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this Section shall prohibit Contractor from participating in future City contracts, until all penalties have been satisfied.
- 10.3.8 Nothing in this Section shall be interpreted to hold Contractor liable for any discriminatory practice of its Subcontractors.

10.4 NON-DISCRIMINATION IN CONTRACTING.

- 10.4.1 Contractor shall comply, and require each of its Subcontractors to comply, with the City's Nondiscrimination in Contracting Ordinance, codified in San Diego Municipal Code sections 22.3501 - 22.3517,
- 10.4.2 Contractor shall not discriminate, and require its Subcontractors not to discriminate, on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability, in the solicitation, selection, hiring, or treatment of its employees, any applicants for employment, any Subcontractors, vendors, or suppliers.
- 10.4.3 Within sixty calendar days of a request by the City, Contractor shall provide the City a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract.

002186

Contractor shall fully cooperate in any investigation conducted by the City, pursuant to the City's Nondiscrimination in Contracting Ordinance, referenced above.

- 10.4.4 Violation of any provision of Section 10.4 shall be considered a material breach of this Agreement, and may result in remedies being ordered against Contractor up to, and including, termination of this Agreement, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance.

10.5 **LOCAL BUSINESS AND EMPLOYMENT.** Contractor acknowledges that the City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Contractor shall, to the extent reasonably possible, solicit applications for employment, as well as bids and proposals for subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Contractor shall hire qualified local residents and firms, whenever feasible.

10.6 **LIVING WAGE ORDINANCE.** Contractor shall comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code sections 22.4201 et seq., in performing its obligations and/or duties under this Agreement.

10.7 **DRUG-FREE WORKPLACE.**

10.7.1 Contractor shall comply, and require its Subcontractors to comply, with the City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952 and incorporated into this Agreement by this reference. Contractor shall certify, and require its Subcontractors to certify, that it shall provide a drug-free workplace, by submitting to the City a "Contractor Certification for a Drug-Free Workplace" form.

10.7.2 Contractor shall post in a prominent place at Contractor's office a statement setting forth its drug-free policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violations of the prohibition.

10.7.3 Contractor shall establish a drug-free awareness program to inform employees about each of the following:

- a) The dangers of drug abuse in the workplace;
- b) The policy of maintaining a drug-free workplace;
- c) The availability of drug counseling, rehabilitation, and employee assistance programs; and

- d) The penalties that may be imposed upon employees for drug abuse violations.
- 10.7.4 Contractor shall ensure that all subcontracts in connection with this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Section 10.7 of this Agreement, as required by Sections 2A(1) – (3) of City Council Policy 100-17.
- 10.7.5 Contractor, and its Subcontractors, shall be individually responsible for their own drug-free workplace program.
- 10.8 **AMERICANS WITH DISABILITIES ACT.** Contractor shall comply with City Council Policy 100-04, as adopted by City Council Resolution R-282153, relating to the federally-mandated Americans with Disabilities Act [ADA]. Contractor, and its Subcontractors, shall be individually responsible for their own ADA program.
- 10.9 **STORM WATER POLLUTION PREVENTION.** Contractor shall comply, and require each of its Subcontractors to comply, with the City's Storm Water Management and Discharge Control Ordinance, codified in San Diego Municipal Code sections 43.0301 et seq., in performing its obligations and/or duties under this Agreement.
- 10.10 **EMPLOYMENT OF CITY STAFF.** Pursuant to City Council Policy 300-11, the City may, at its sole discretion, unilaterally and immediately terminate this Agreement if Contractor employs an individual, who, within twelve months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council, the Mayor, or former City Manager in connection with the selection of Contractor for the CPD Program.
- 10.11 **POLITICAL ACTIVITY.** Contractor shall not use, and require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or materials paid for with funds received pursuant to this Agreement, for political activity. The term, "political activity," shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state, or local government election.
- 10.12 **BROWN ACT.** Contractor shall comply with the provisions of the Ralph M. Brown Act, codified in California Government Code sections 54950-54963.
- 10.13 **PUBLIC RECORDS ACT.** Contractor shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250 – 6270, for all documents and records relating to the activities of the District.
- 10.14 **OPERATING MANUAL.** Contractor acknowledges receipt of, and shall comply with, the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to

fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.

ARTICLE XI – (reserved)

ARTICLE XII – INSURANCE

12.1 PREREQUISITES TO COMMENCEMENT OF WORK.

- 12.1.1 Prior to the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, and prior to Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall complete each of the following:
- a) comply with Section 12.2 below regarding insurance companies;
 - b) obtain all insurance coverage required in Sections 12.3, 12.4, and 12.5 below;
 - c) obtain, and provide to the City, insurance certificates reflecting evidence of all insurance coverage required in Sections 12.3, 12.4, and 12.5 below; and
 - d) confirm that all insurance policies and insurance certificates contain the specific provisions required in Sections 12.3, 12.4, and 12.5 below.
- 12.1.2 Contractor shall not allow any Subcontractor to commence work on a subcontract in connection with this Agreement, unless and until all insurance required of the Subcontractor (as described in Sections 12.3, 12.4, 12.5, and 16.2.1 below) has been obtained.

12.2 INSURANCE COMPANIES. Contractor shall ensure that all insurance coverage required in Sections 12.3, 12.4, and 12.5 below is carried only by insurers that have been rated "A-, VI," or better, by the current A.M. Best Key Rating Guide, and that are licensed to do business in the State of California. The City will accept insurance provided by non-admitted "surplus lines" carriers, only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers.

12.3 COMMERCIAL GENERAL LIABILITY INSURANCE.

- 12.3.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial General Liability Insurance, written on an ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of \$1,000,000 per occurrence, subject to an annual aggregate of \$2,000,000.

- 12.3.2 The policy shall expressly provide that:
- a) all defense costs shall be outside the limits of the policy; and
 - b) the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
- 12.3.3 The policy shall be endorsed to expressly provide that:
- a) the City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds; and
 - b) the policy is primary and non-contributory to any insurance that may be carried by the City.
- 12.3.4 There shall be no endorsement or modification of the policy limiting the scope of coverage for insured vs. insured claims, or for contractual liability.

12.4 COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.

- 12.4.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial Automobile Liability Insurance for all of Contractor's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence.
- 12.4.2 The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail
- 12.4.3 The policy shall be endorsed to expressly provide that The City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds.

12.5 WORKERS' COMPENSATION INSURANCE.

- 12.5.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Workers' Compensation Insurance for all of Contractor's employees who are subject to this Agreement, to the extent required by the State of California, providing a minimum of \$1,000,000 of employers' liability coverage.
- 12.5.2 The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail

- 12.5.3 The policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.
- 12.6 **ENDORSEMENTS:** All endorsements required under Sections 12.3.3, 12.4.3, and 12.5.3 above shall be in full force and effect for the entire term of this Agreement.
- 12.7 **CITY'S RIGHT TO REQUEST AND REVIEW CONTRACTOR'S INSURANCE POLICIES.** The City reserves its right to request, and Contractor shall immediately submit to the City upon the City's request, copies of any policy required in Sections 12.3, 12.4, and 12.5 above, and its right to review, at any time, Contractor's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are sufficient, given the level of risk associated with the services described in the Scope of Services (Exhibit A). If the City determines that any such insurance coverage, limits, deductibles, and/or self-insured retentions is insufficient, the City and Contractor shall amend this Agreement to increase such insurance coverage, limits, deductibles, and/or self-insured retentions to a sufficient level, as determined by the City, and Contractor shall comply with any such amendment.
- 12.8 **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** All deductibles and self-insured retentions on any policy shall be the responsibility of Contractor, and shall be disclosed on the insurance certificates and acceptable to the City at the time the required evidence of insurance is provided to the City.
- 12.9 **CONTRACTOR'S LIABILITY NOT LIMITED TO INSURANCE COVERAGE.** Contractor's liability, including, but not limited to, Contractor's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Article.
- 12.10 **MODIFICATIONS AFFECTING CITY'S EXPOSURE TO LOSS.** Contractor shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of this Agreement.
- 12.11 **ADDITIONAL INSURANCE.** Contractor may obtain additional insurance not required by this Agreement.
- 12.12 **EXPIRATION OF POLICIES.** At least thirty calendar days prior to the expiration of each insurance policy required in Sections 12.3, 12.4, and 12.5 above, Contractor shall provide the City an insurance certificate (accompanied by all required endorsements), showing that a new or extended policy has been obtained which meets the requirements of this Agreement.

- 12.13 **REQUIREMENT TO MAINTAIN INSURANCE COVERAGE.** Contractor's maintenance of the insurance coverage required in Sections 12.3, 12.4, and 12.5 above is a material provision of this Agreement. Any failure by Contractor to maintain or renew such coverage, or to provide the City evidence of renewal, during the term of this Agreement, shall constitute a material breach of contract.

ARTICLE XIII – SUSPENSION OR DISALLOWANCE OF PAYMENTS; TERMINATION

13.1 SUSPENSION OR DISALLOWANCE OF PAYMENTS.

- 13.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:

- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
- b) disallowing funds for all or part of the cost of the activity or action not in compliance.

- 13.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

13.2 TERMINATION FOR ANY REASON.

- 13.2.1 Notwithstanding the term of this Agreement as specified in Section 3.1 above, the City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days written notice of the termination to the other party (delivered in accordance with the provisions of Article XVII below).

- 13.2.2 In the event this Agreement is terminated pursuant to Section 13.2.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, no later than the termination date of this Agreement.

13.3 TERMINATION FOR CURABLE DEFAULT.

- 13.3.1 Except as provided in Section 13.4.1 below, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor (delivered in accordance with the provisions of Article XVII below), if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.
- 13.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in Section 13.3.1 above.
- 13.3.3 In the event this Agreement is terminated pursuant to Section 13.3.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

13.4 TERMINATION FOR INCURABLE DEFAULT.

- 13.4.1 The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor (delivered in accordance with the provisions of Article XVII below), for reasons including, but not limited to, each of the following:
- a) Contractor makes material misrepresentations in regard to information furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;
 - b) Contractor, or any of its officers or directors, becomes subject to any pending court action or proceeding with respect to the performance of Contractor's obligations and/or duties under this Agreement (or any prior agreement with the City to administer the District), which may jeopardize or adversely affect the Parties' understanding of, and/or Contractor's performance of its obligations and/or duties under, this Agreement;
 - c) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or

- d) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Plan that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

13.4.2 In the event this Agreement is terminated pursuant to Section 13.4.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

13.5 **CONTINUING RESPONSIBILITIES.** In the event this Agreement is terminated, Contractor shall complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Contractor shall be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination. By accepting payment for completion, as well as filing and delivering documents as called for in this Article, Contractor discharges the City of all of the City's payment obligations and liabilities under this Agreement.

13.6 **RIGHTS AND REMEDIES.** The City's termination of this Agreement shall terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

13.7 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and the City elects not to enter into a subsequent agreement with Contractor to administer the District for the following fiscal year, Contractor shall deliver to the City:

- a) all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the expiration date of this Agreement; and
- b) the Annual Report, in accordance with Section 9.3.3 above.

002194 **ARTICLE XIV – INFORMAL DISPUTE RESOLUTION;
ATTORNEY’S FEES; MANDATORY ASSISTANCE**

- 14.1 **INFORMAL DISPUTE RESOLUTION.** If the City and Contractor have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice to the other party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five calendar days of the second party’s receipt of such notice, or at such time thereafter as is reasonable under the circumstances.
- 14.2 **ATTORNEY’S FEES.** If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of, or based upon, this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in the action or proceeding shall be entitled to recovery of its costs and reasonable attorney’s fees, in addition to any other award made in such action or proceeding.
- 14.3 **MANDATORY ASSISTANCE.**
- 14.3.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to, the Services provided under this Agreement, upon the City’s request, Contractor, its agents, officers, and employees shall assist the City in resolving the dispute or litigation. Contractor’s assistance to the City, hereinafter referred to as “Mandatory Assistance,” includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation.
- 14.3.2 The City will reimburse Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and/or employees, Contractor shall reimburse the City for all fees paid to Contractor, its agents, officers, and/or employees for Mandatory Assistance.
- 14.3.3 In providing the City with Mandatory Assistance, Contractor, its agents, officers, and/or employees may incur expenses and/or costs. Any attorney’s fees Contractor may incur as a result of providing Mandatory Assistance are not reimbursable. This provision does not in any way affect the Parties’ rights to seek attorney’s fees under Section 14.2 above.

ARTICLE XV – INDEMNIFICATION

- 15.1 **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** Contractor shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, but not limited to, injury to Contractor's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Contractor, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required or authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. However, Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its elected officials, departments, officers, employees, representatives, and/or agents. The City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay the City for all costs related thereto, including, without limitation, attorney's fees and costs.
- 15.2 **ENFORCEMENT COSTS.** Contractor shall pay the City any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 15.1 above.

ARTICLE XVI – SUBCONTRACTORS

- 16.1 **SUBCONTRACTORS LIST AND SUBCONTRACTS.**
- 16.1.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:
- a) a completed Subcontractors List, listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement; and
 - b) a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.

The City will forward the Subcontractors List to EOCP.

- 16.1.2 If, during the term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days

of the date of any subcontract for such services, provide the City with each of the following:

- a) a copy of the subcontract, including the scope of work, along with a written statement describing the justification for the additional Subcontractor services, and an itemization of all costs for the additional Subcontractor services; and
- b) an updated Subcontractors List that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional Subcontractor services.

The City will forward the updated Subcontractors List to EOCP.

- 16.1.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit C. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.

- 16.2 **REQUIRED LANGUAGE.** Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain the information described in Sections 5.1, 8.1, 8.2, 8.3, 8.4, 10.1, 10.3, 10.4, 10.6, 10.7, 10.9, and 10.11 above, and provide as follows:

- 16.2.1 Subcontractor shall obtain all insurance coverage required in Sections 12.3, 12.4, and 12.5 of the City's Agreement with Contractor, and shall maintain, in full force and effect, such insurance coverage during any and all work performed in connection with the City's Agreement with Contractor. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.

- 16.2.2 In any dispute between Contractor and Subcontractor pertaining to the City's Agreement with Contractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. Contractor shall defend and indemnify the City (as described in Section 15.1 of City's Agreement with Contractor) in any dispute between Contractor and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.

- 16.3 **CONTRACT ACTIVITY REPORT.** Within ten calendar days of a written request by the City, Contractor shall provide the City:

- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and
- b) an invoice from each Subcontractor listed in the Contract Activity Report.

- 16.4 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

ARTICLE XVII – NOTICE

- 17.1 In all cases where written notice is required under this Agreement, service of such notice shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement.
- 17.2 For the purposes of this Agreement, unless otherwise modified by written amendment to this Agreement, notice to the City shall be addressed to:

City of San Diego
Economic Development Division
Attn: Scott Kessler, Deputy Director
1200 Third Ave., Suite 1400
San Diego, CA 92101

Notice to Contractor shall be addressed as specified in Exhibit A.

ARTICLE XVIII – CONFIDENTIALITY OF INFORMATION

- 18.1 All information provided by the City to Contractor in connection with this Agreement is for the sole use of Contractor. Contractor shall not release any such information to any third party, without the prior written consent of the City.
- 18.2 Section 18.1 above does not apply to information that:
- a) was publicly known, or otherwise known to Contractor, at the time the information was provided to Contractor by the City;
 - b) subsequently becomes publicly known, through no act or omission of Contractor;
 - c) becomes known to Contractor from a source or means other than the City; or
 - d) is considered a "public record," pursuant to the California Public Records Act (California Government Code sections 6250 – 6270).

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

ARTICLE XIX – ACKNOWLEDGMENT OF CITY; PRODUCT ENDORSEMENTS.**19.1 ACKNOWLEDGMENT OF THE CITY IN CONTRACTOR'S DOCUMENTS.**

Contractor shall acknowledge the City's financial support in all documents prepared pursuant to this Agreement and on Contractor's website, if any. Such acknowledgment shall be prominently displayed on all such documents and on Contractor's website. When any such document and/or website expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the document and/or website does not necessarily reflect the policy of the City of San Diego.

19.2 PRODUCT ENDORSEMENTS. Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.**ARTICLE XX – MISCELLANEOUS PROVISIONS****20.1 MUNICIPAL POWERS.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.**20.2 GOVERNING LAW.** The terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State of California. Any newly adopted rules and regulations or changes to existing rules and regulations shall become effective for the administration of this Agreement upon receipt by the City, and written notice of such newly adopted rules and regulations or changes to existing rules and regulations to Contractor.**20.3 JURISDICTION AND VENUE.** The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State Court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Article XIV above.**20.4 INTEGRATED AGREEMENT.** This Agreement, and the Exhibits and references incorporated into this Agreement, fully express all understandings of the Parties concerning the matters covered in this Agreement. All prior negotiations and agreements are merged into this Agreement.**20.5 CHANGES OR AMENDMENTS TO AGREEMENT.** Should circumstances require that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be accomplished only as follows:

- a) a change to any of the terms or conditions of this Agreement, that does not affect the total payments herein, shall be accomplished by a written amendment to the Agreement, signed by the authorized representatives of the City and Contractor;
- b) a change which affects the total payments specified under this Agreement, shall be accomplished by a written amendment to this Agreement, provided that:

002199

- 1) if the change results in a total payment to Contractor of \$250,000 or more, then such amendment shall be approved by the City Council, and signed by the authorized representatives of the City and Contractor; or
- 2) if the change results in a total payment to Contractor of less than \$250,000, then such amendment shall be signed by the authorized representatives of the City and Contractor.

20.6 **COVENANTS AND CONDITIONS.** All provisions herein, expressed as either covenants or conditions on the part of the City or Contractor to be performed or observed, shall be deemed to be both covenants and conditions.

20.7 **NO WAIVER.** No failure of either the City or Contractor to insist upon the strict performance by the other of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any term, covenant, or condition of this Agreement, shall constitute a waiver of any such breach of such term, covenant, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every term, covenant, and condition, herein shall continue in full force and effect to any existing or subsequent breach.

20.8 **SUCCESSORS IN INTEREST.** This Agreement, and all rights, obligations, and/or duties under this Agreement, shall be in full force and effect, whether or not any party to the Agreement has been succeeded by another entity, and all rights, obligations, and/or duties under this Agreement shall be vested and binding on any party's successor in interest.

20.9 **SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

20.10 **CONFLICTS BETWEEN TERMS.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, then the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

20.11 **DRAFTING AMBIGUITIES.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.

002200

- 20.12 **SIGNING AUTHORITY.** The representative for each party signing on behalf of a corporation, partnership, joint venture, or governmental entity declares that he or she has obtained actual authority to sign on behalf of the corporation, partnership, joint venture, or entity, and shall hold the other party or parties hereto harmless if it is later determined that such authority does not exist.
- 20.13 **COUNTERPARTS.** This Agreement may be executed in counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had executed the same page.
- 20.14 **HEADINGS.** All headings in this Agreement are for convenience only, and shall not affect the interpretation of this Agreement.
- 20.15 **EXHIBITS INCORPORATED.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

IN WITNESS WHEREOF, this Agreement is executed by The City of San Diego, acting by and through its Mayor, pursuant to Resolution No. R-_____, authorizing such execution, and by Contractor.

Dated this _____ day of _____, 200__.

The City of San Diego

Uptown Partnership, Inc.

By _____
W. Downs Prior
Principal Contract Specialist

By _____
Cindy Lehman
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this
_____ day of _____, 200__.

MICHAEL J. AGUIRRE
City Attorney

By _____
Michael D. Neumeyer
Deputy City Attorney

002201

COMMUNITY PARKING DISTRICT PROGRAM

The following Scope of Services outlines of the activities/services for the contract period of July 1, 2007 to June 30, 2008. The outline includes:

- a.) the overarching goals of the Contractor/Agency,
 - b.) the program objectives (described in measurable objectives as appropriate), and
 - c.) a section summarizing operational expenses (Exhibit B).
-

Uptown Partnership's goals:

- To improve the Uptown community by increasing parking options, ensuring safe, friendly streets, and promoting economic revitalization.
- To develop a vibrant Uptown community through creative collaborations that enhance the vitality of our businesses, sustain the health of our residential community, and promote a model cohesive neighborhood.

Program Objectives:**I. Complete six feasibility studies related to parking and mobility.**

1. Uptown Parking Investment Analysis
Analyze alternatives and develop agreement with City of San Diego on acceptable types of private investments for parking meter revenues.
2. Uptown Meter and Parking Use Study
Conduct comprehensive analysis of on-street meter use and parking patterns in context of community land uses and traffic; Prepare recommendations to maximize usability of existing on-street parking spaces.
3. Library-Florence School Shared Parking Design
Mission Hills-Hillcrest Library plans include 90 public parking spaces; Contract with consultants on design and feasibility issues related to public use of library parking.
4. Washington Intersections @ 4th & 5th Design
Design facilities to improve pedestrian access across Washington Street from the Medical Center as identified in Partnership's evaluation of pedestrian safety and the traffic calming study.
5. Normal St: Blaine to Lincoln [DMV project]
Initiate a study to integrate public parking and street improvements into the proposed redevelopment of the California DMV office on Normal Street.
6. Bankers Hill-Park West Streetscape Design
Develop urban design concept in conjunction with Hillcrest Mobility Plan for improved vehicle and pedestrian movement.

II. Initiate seven capital improvement projects that will enhance the circulation and streetscape of the parking district

1. Fourth & Quince Improvements
Contribute \$25,000 matching funds to City grant application of ~ \$260,000, which is intended for flashing crosswalk.
2. Washington & Goldfinch Improvements
Add \$10,000 funding requested by Mission Hills BID and approved by Board in 2005 to CIP for construction of traffic calming and sidewalk improvements.
3. Uptown Flashing Crosswalks

002202 Install pedestrian-operated flashing crosswalks at three Uptown intersections identified primarily by community input and need.

4. Hillcrest Intersection Improvements
Install pedestrian advance and count-down signals and ladder crosswalks at five intersections identified with assistance of Traffic Engineering.
5. Uptown Multi-space Meter Installations
Install multi-space meters for new diagonal parking on San Diego Avenue and Normal Street.
6. Library-Florence School Shared Parking Facilities
Fund parking lot improvements required for public use of Florence School parking lot on evenings and weekends.
7. Five Points Parking and Traffic Improvements
Fund 50% of permanent curb improvements in written plan approved by City Traffic Engineering and neighborhood; Seek redevelopment funds for remaining 50%.

III. Continue six community relationship activities/programs to educate and involve the community residents and businesses of the parking district.

1. Parking Card Program Sales and Management
Sell approximately \$180,000 worth of parking cards. Continue to provide public assistance and manage card program.
2. Utility Art Box program
Confirm location of 100+ existing painted utility boxes with GPS; assess their condition; recommend a program and timetable for maintaining or replacing existing boxes and for adding new ones.
3. Public Awareness
Prepare and distribute three newsletters per fiscal year to approximately 2,200 recipients; Maintain current information on one website; Provide parking information to public through office; Staff booth at City Fest street fair.
4. Construction Mitigation
Continue on-going efforts to work with Council offices and BIDs to alleviate public project impacts on neighborhoods.
5. Community Organizations Liaison
Maintain close working relationships with City staff, community leaders, and political representatives; Attend monthly meetings of five community organizations and quarterly meetings of a sixth organization.
6. Uptown Transit Corridor Monitoring
Staff Planner coordinates community responses to transit changes proposed by MTS three times per year.

002203

COMMUNITY PARKING DISTRICT PROGRAM
Fiscal Year 2008

Contractor: Uptown Partnership, Inc.

Mailing Address: 3108 Fifth Ave, Ste B, San Diego, CA 92103

Fiscal Year End: June 30, 2008

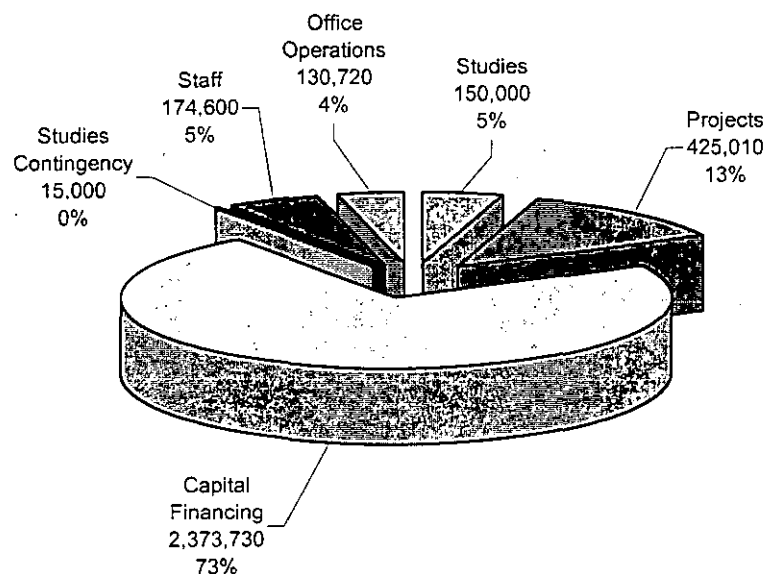
Uptown Community Parking District: Budget Summary FY08

Expenditure Categories	Total FY08 Organization Budgeted Expenditures from CPD Funds	Total FY08 Organization Budgeted Expenditures from Other Funds
Feasibility Studies/Consultant Costs	\$ 150,000	
Capital Improvement Projects	\$ 425,010	
Capital Project Financing /1	\$ 2,373,720	
Contingency Financing	\$ 15,000	
Administration: Staffing	\$ 174,600	
Administration: Office Operations	\$ 130,720	
Parking Card Purchases /2		\$ 181,130
TOTAL	\$ 3,269,050	\$ 181,130

1/ Outcome of Uptown parking investments and Hillcrest garage feasibility will determine expenditure of these funds

2/ Sale of parking cards to public at cost produces Other Funds to offset cost of purchasing parking cards

Program Budget
for CPD Funds in FY 2007-08
\$3,269,050



**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND
GREATER GOLDEN HILL COMMUNITY DEVELOPMENT CORPORATION**

This Agreement [Agreement] is entered into by the City of San Diego, a municipal corporation [City] and Greater Golden Hill Community Development Corporation [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, the City Council designated specific geographic areas (Mid-City Community Plan Area, Golden Hill Community Plan Area, El Cajon Business Improvement District, Adams Avenue Business Improvement District, North Park Business Improvement District, and City Heights Business Improvement District) as the Mid-City Community Parking District [District]; and

WHEREAS, on December 2, 1997, the City Council adopted Resolution No. R-289522, in which the City Council designated the Mid-City Parking Meter Advisory Board as the Advisory Board for the District; and

WHEREAS, the Mid-City Parking Meter Advisory Board recommended and approved the Memorandum of Understanding that was entered into by El Cajon Boulevard Business Improvement Association, University Heights Community Development Corporation, and Greater Golden Hill Community Development Corporation for each of the non-profit corporations to act as the responsible fiscal entity to carry out the CPD Program for their respective geographic portions of the District; and

WHEREAS, pursuant to the approved Memorandum of Understanding, Contractor shall act as the responsible fiscal entity for its geographic portion of the District; and

WHEREAS, on _____, _____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2008 to be carried out by Contractor;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I - INCORPORATION OF RECITALS

- 1.1 The Recitals set forth above are true and correct, and are hereby incorporated in full and made a part of this Agreement by this reference.

ARTICLE II - DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

- 2.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.
- 2.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in Exhibit B.
- 2.3 Plan Revenue – All revenue that accrues to Contractor as a result of its receipt of funds provided under this Agreement, including interest earned on these funds deposited in an interest bearing account.
- 2.4 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under this Agreement.

ARTICLE III – EFFECTIVE DATE; TERM OF AGREEMENT

- 3.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2007 and continue for one year until June 30, 2008, unless terminated earlier in accordance with the terms of this Agreement.
- 3.2 This Agreement may be extended for up to ninety additional calendar days, pursuant to Section 20.5 below.
- 3.3 Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

ARTICLE IV – CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE

- 4.1 The City's Economic Development Division [Division] is the contract administrator for this Agreement. The City will identify a designated representative for the purposes of this Agreement.
- 4.2 The City's designated representative shall communicate with Contractor on all matters related to the administration of this Agreement and Contractor's performance of its obligations and

002207

duties rendered hereunder. Contractor shall work solely under the direction of the City's designated representative in performing Contractor's obligations and duties under this Agreement.

- 4.3 When this Agreement refers to communications to or with the City, those communications shall be with the designated representative, unless the designated representative or the Agreement specifies otherwise. When this Agreement refers to an act or approval to be performed by the City, that act or approval shall be performed by the Mayor (or his designee), unless the Agreement specifies otherwise.
- 4.4 The City, at its sole discretion, may change its designated representative at any time, and if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending change.

ARTICLE V – INDEPENDENT CONTRACTOR; ASSIGNMENT; DESIGNATED REPRESENTATIVE

- 5.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Contractor shall follow the direction of the City concerning the end results of the performance. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.
- 5.2 Because this Agreement is entered into by the City in reliance upon Contractor's qualifications, experience, and personnel identified, Contractor shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any assignment in violation of this Section is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.
- 5.3 Contractor shall identify a designated representative for the purposes of this Agreement. In

002208

the event Contractor changes its designated representative for the purposes of this Agreement, Contractor shall notify the City of the new designated representative within ten calendar days of the date of such change.

ARTICLE VI - OBLIGATIONS OF CONTRACTOR

- 6.1 Contractor shall perform the services described in the Scope of Services (Exhibit A), in accordance with the Plan Budget (Exhibit B) and all other terms and conditions of this Agreement.
- 6.2 The Scope of Services (Exhibit A) shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

ARTICLE VII – PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT; PLAN REVENUE

7.1 PLAN BUDGET AND EXPENDITURES.

- 7.1.1 The Plan Budget (Exhibit B) shall be in sufficient detail to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.
- 7.1.2 Funds provided by the City to Contractor under this Agreement may be used only for staffing, education and outreach, general operations, research activities (including Subcontractor expenses), design and engineering expenses, and other reasonable and appropriate costs related to Contractor's services listed in the Scope of Services (Exhibit A) and the Plan Budget (Exhibit B). Any reimbursable expenditures incurred by Contractor shall be essential to the proper and efficient performance of those services required by this Agreement and shall fall within the prescribed limitations of this Section, the Operating Manual, and applicable laws, rules, and regulations governing this Agreement. Any other expenditures, including travel, meals, lodging, and entertainment costs, or any alcoholic beverages, will not be reimbursable under this Agreement and shall be borne solely by Contractor.
- 7.1.3 The City will not reimburse Contractor for, and Contractor shall not request reimbursement for, any expenditure that is ineligible under, this Agreement, the Plan Budget (Exhibit B), the Operating Manual, and/or Counsel Policy 100-18.
- 7.1.4 Contractor shall not use the funds provided under this Agreement in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

7.2 ADVANCES.

7.2.1 At the written request of Contractor, the City may make an advance payment to Contractor in an amount not to exceed \$2,000 to meet the cost of salaries and operating expenses during the first eight weeks of Contractor's performance under this Agreement. Repayment of such an advance may be charged by the City against the last two months of submitted reimbursement requests. The City will, at its sole discretion, either require Contractor to return any unexpended funds from the advance payment to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unexpended funds from the advance to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unexpended funds from the advance payment upon the termination date of this Agreement.

7.2.2 At the written request of Contractor, the City may, on a monthly basis, provide parking meter cards and/or deposit reload time (in dollars) onto Contractor's parking meter card reload time dispenser, with a total value not to exceed \$1,000 per month. Contractor acknowledges that any provision of parking meter cards, reload time (in dollars), and/or the proceeds from the sale of such cards and/or reload time is an advance to Contractor of funds under this Agreement, which Contractor shall only use to pay for eligible expenditures made in connection with this Agreement. The City will, at its sole discretion, either require Contractor to return any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time within ten calendar days of the termination date of this Agreement.

7.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed \$29,452, as set forth in the Plan Budget (Exhibit B). Any amount not expended under this Agreement, shall roll over to the next fiscal year allocation of funds, subject to the City Council's annual review and approval of community parking district implementation plans and authorization of further contracts to administer the District.

002210

7.4 ADDITIONAL FUNDING SOURCES. If Contractor has received or does receive additional funding for the Plan from a source or sources other than the City, the use of which requires that Contractor make an accounting to, or be subject to, an audit by such other source, then Contractor shall charge Plan expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

7.5 PAYMENT SCHEDULE.

- 7.5.1 In the event Contractor accrues cash advances and/or proceeds from the sale of parking meter cards and/or reload time (in dollars) in an amount that exceeds \$2,000, Contractor shall apply cash advances and/or proceeds from the sale of parking meter cards and/or reload time toward eligible expenditures, before requesting from the City any additional parking meter cards, reload time, or reimbursement for eligible expenditures.
- 7.5.2 Contractor shall not accrue parking meter cards, reload time (in dollars) or any combination thereof, in an amount that exceeds \$2,000.
- 7.5.3 Contractor shall request reimbursement from the City no more than once per month during the term of this Agreement.
- 7.5.4 Contractor shall, by the fifteenth day of each month, submit to the City a report (original plus one copy) documenting Contractor's activities, income, and expenditures for the preceding month, along with copies of all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed, as described in the Operating Manual. In addition, Contractor shall specify in the report the amount of expenditures requested for reimbursement. Contractor shall ensure that each report states: "Contractor certifies that staff time expended and expenses submitted are for services performed in accordance with the provisions of Contractor's Community Parking District Agreement with the City," and that the report is signed by an officer of Contractor.
- 7.5.5 Any expenditure contained in the report described in Section 7.5.4 above that is not consistent with the Plan Budget (Exhibit B), or is not supported with proper documentation as described in Section 7.5.4 above, shall be considered an ineligible expenditure.
- 7.5.6 Within thirty calendar days of the City's receipt of a properly completed Reimbursement Request from Contractor, the City will verify the eligibility of each expenditure described in the Reimbursement Request, and reimburse Contractor for all eligible expenditures (as described in Section 7.1.2 above), less

002211

those eligible expenditures already paid for by Contractor with the proceeds from the sale of parking meter cards and/or reload time (pursuant to Section 7.5.1 above), and less any expenditures deemed ineligible by the City but already paid for by Contractor with such proceeds.

- 7.5.7 The City will withhold the final payment to Contractor until Contractor has accounted for the cash advance, parking meter cards, reload time (in dollars), proceeds from the sale of such cards and reload time, as well as all expenditures made by Contractor in connection with this Agreement, and Contractor has submitted to the City a Final Report (and any other reports requested by the City) summarizing the services performed by Contractor pursuant to this Agreement, notwithstanding the provisions of Section 7.2 above.

7.6 DIRECT PAYMENTS

- 7.6.1 The City may, at its sole discretion, make a direct payment from Contractor's Community Parking District Revenue Fund [CPD Revenue Fund] on behalf of Contractor for expenses in excess of \$5,000 to facilitate capital improvement projects.
- 7.6.2 The City may, at the written request of Contractor, execute an interfund transfer (or other action) to effect payment from Contractor's CPD Revenue Fund to another City fund for eligible expenses, such as the purchase of parking meter cards and refill time.
- 7.6.3 The City may, at the written request of Contractor, make a direct payment from Contractor's CPD Revenue Fund to a Subcontractor for eligible expenses, provided:
- a) the amount of the direct payment exceeds fifty percent of Contractor's outstanding advance; and
 - b) the subcontract, furnished to the City, complies with the requirements set forth in Article XVI below.

- 7.7 **PLAN REVENUE.** It is anticipated that some of Contractor's services (including capital improvement projects) may generate substantial Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:
- a) to repay any debt incurred and/or secured by the specific project that generates the revenue;
 - b) to pay for operational costs of the project;
 - c) to pay for maintenance costs of the project; and/or
 - d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services (Exhibit A) and Plan Budget (Exhibit B).

002212

Contractor shall account for Plan Revenue separately in the account established pursuant to Section 8.2 below. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

- 7.8 **BUDGET ADJUSTMENTS.** Contractor shall have authority to adjust the line items of its Plan Budget (Exhibit B) by up to five percent per line without securing prior City approval. Any Plan Budget adjustment greater than five percent shall be considered an Amendment to this Agreement and requires City approval, as provided in Section 20.5 below.

ARTICLE VIII - DATA AND RECORDS

- 8.1 **GENERAL.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) during the term of this Agreement.
- 8.2 **ACCOUNTING RECORDS.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Plan-related accounting records, documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.
- 8.3 **INSPECTION AND PHOTOCOPYING.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Plan-related data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties under this Agreement. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law.
- 8.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration date of this Agreement. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or its authorized agents, to examine all such data and records, for the purposes described in Sections 8.2 and 8.3 above. After the storage period has expired, or all audit findings

002213

have been resolved, whichever is later, Contractor shall provide the City with thirty calendar days written notice of its intent to dispose of any Plan-related data and/or records.

- 8.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by the City, the originals of all such data and records to the City. Contractor may retain copies of all data and records delivered to the City.
- 8.6 **OWNERSHIP OF DOCUMENTS.** Once Contractor has received any reimbursement from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of the City. The City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Plan, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

ARTICLE IX – AUDITS; FINANCIAL DISCLOSURES; OTHER REPORTS

- 9.1 **AUDITS.** Contractor shall ensure that Annual Single Audits and Financial Statement Audits are completed by a Certified Public Accountant. Individual projects funded by the City shall be clearly identified in the audit reports, as well as the dollar amount allocated to the Plan by the City.
- 9.1.1 In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, Contractors expending \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year, shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Contractor shall ensure that Single Audits are completed within 180 calendar days of the expiration date of this Agreement. Contractors completing audits by calendar year (rather than fiscal year) shall ensure that Single Audits are completed within 180 calendar days of December 31st. Contractor shall provide the City with a copy of the Single Audit within fifteen calendar days of Contractor's receipt of the audit.
- 9.1.2 Contractors receiving \$75,000 or more in federal, state, and/or City funds shall have Financial Statement Audits prepared in accordance with GAAP and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards [GAAS]. This audit shall include the following statements:
- a) a statement of expenditure of City funds by program, to be identified

in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts;

- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor; and
- c) a statement certifying compliance with all terms and conditions of the City's contract with Contractor, and that all required reports and disclosures have been submitted, completed by an executive officer of Contractor.

Contractor shall provide the City a copy of the Financial Statement Audit within 150 calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

- 9.1.3 If Contractor is subject to an audit from a source other than the City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s).

- 9.2 **FINANCIAL DISCLOSURES.** Contractors receiving \$10,000 or more, but less than \$75,000, in federal, state, and/or City funds shall provide the City copies of true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year. Specifically, Contractor shall submit the following:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts; and
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor.

Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

9.3 **OTHER REPORTS**

- 9.3.1 Contractors receiving less than \$10,000 in federal, state, and/or City funds shall provide a report of how the funds were used during the contract period. Contractor shall provide the City with a copy of this report within thirty calendar days of the expiration date of this Agreement. If Contractor is also in receipt of an Annual Single Audit or Financial Statement Audit, Contractor shall submit a copy of such audit to the City within fifteen calendar days of Contractor's receipt of the audit.

002215

- 9.3.2 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date, a narrative of proposed activities for the coming fiscal year, as well as a proposed budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).
- 9.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals, accomplishments, and expenditures for Fiscal Year 2008. The report shall be delivered to the City by November 30, 2008.

ARTICLE X – COMPLIANCE WITH LAWS AND POLICIES

- 10.1 **GENERAL.** Contractor shall comply, and require each of its Subcontractors to comply, with all applicable laws, rules, regulations, ordinances, resolutions, permits, and policies of the federal, state, and local governments, as they pertain to this Agreement. In addition, Contractor shall immediately comply, and require each of its Subcontractors to immediately comply, with all directives issued by the City, or its authorized representatives, under authority of any law, statute, ordinance, rule, or regulation.
- 10.2 **CONFLICT OF INTEREST.**
- 10.2.1 Contractor shall comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:
- a) California Government Code sections 1090 et. seq., and 81000 et. seq.;
 - b) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
 - c) The City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
 - d) The "CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NON-PROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO" (Exhibit C).
- 10.2.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.
- 10.2.3 If, in performing its obligations and duties set forth in this Agreement, Contractor makes, or participates in, a "governmental decision," as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City that would

002216

otherwise be performed by a City employee holding a position specified in the City's conflict of interest regulations, Contractor shall be subject to the City's conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing Contractor's relevant financial interests.

10.2.3.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that Contractor is subject to the City's conflict of interest regulations. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to the City's conflict of interest regulations.

10.2.3.2 If the City requires Contractor to file a statement of economic interests as a result of Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall be considered a "City Official," subject to the provisions of the City's Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

10.2.4 Contractor shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.

10.2.5 Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.2.6 If Contractor violates any conflict of interest law, or any of the provisions of Section 10.2 of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit C. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as a result of the violation.

10.3 **EQUAL EMPLOYMENT OPPORTUNITY.**

10.3.1 Contractor shall comply, and require its Subcontractors to comply, with the

002217

City's Equal Employment Opportunity [EEO] Outreach Program, codified in San Diego Municipal Code sections 22.2701 - 22.2707. Contractor and all of its Subcontractors are individually responsible for abiding by its contents.

- 10.3.2 Contractor shall comply, and require each of its Subcontractors to comply, with Title VII of the Civil Rights Act of 1964, as amended (Executive Orders 11246, 11375, and 12086), California Fair Employment Practices Act, and any other applicable federal and state laws and/or regulations hereinafter enacted.
- 10.3.3 Contractor shall not discriminate, and require each of its Subcontractors not to discriminate, on the basis of race, gender, religion, national origin, sexual orientation, age, or disability, in performing any obligation or duty in connection with this Agreement, including, but not limited to, the provision of services, privileges, facilities, advantages, and accommodations.
- 10.3.4 Contractor, and each of its Subcontractors, shall provide equal opportunity in all employment practices.
- 10.3.5 Contractor shall submit to the City, a current Work Force Report, and if requested by the Equal Opportunity Contracting Program [EOCP] staff, an Equal Employment Opportunity Plan, as required by San Diego Municipal Code section 22.2705.
- 10.3.6 Contractor understands that compliance with the EEO provisions shall be monitored and reviewed by the City's EOCP staff.
- 10.3.7 Contractor's failure to comply with the above requirements, or its submittal of false information in response to these requirements, may result in any of the following: the withholding of progress payments until Contractor complies with the above; termination of this Agreement; debarment; and/or other sanctions, including suspension from participating in future City contracts (as a prime or Subcontractor) for a period of not less than one year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this Section shall prohibit Contractor from participating in future City contracts, until all penalties have been satisfied.
- 10.3.8 Nothing in this Section shall be interpreted to hold Contractor liable for any discriminatory practice of its Subcontractors.

10.4 **NON-DISCRIMINATION IN CONTRACTING.**

- 10.4.1 Contractor shall comply, and require each of its Subcontractors to comply, with the City's Nondiscrimination in Contracting Ordinance, codified in San Diego Municipal Code sections 22.3501 - 22.3517,

002218

- 10.4.2 Contractor shall not discriminate, and require its Subcontractors not to discriminate, on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability, in the solicitation, selection, hiring, or treatment of its employees, any applicants for employment, any Subcontractors, vendors, or suppliers.
- 10.4.3 Within sixty calendar days of a request by the City, Contractor shall provide the City a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor shall fully cooperate in any investigation conducted by the City, pursuant to the City's Nondiscrimination in Contracting Ordinance, referenced above.
- 10.4.4 Violation of any provision of Section 10.4 shall be considered a material breach of this Agreement, and may result in remedies being ordered against Contractor up to, and including, termination of this Agreement, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance.
- 10.5 **LOCAL BUSINESS AND EMPLOYMENT.** Contractor acknowledges that the City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Contractor shall, to the extent reasonably possible, solicit applications for employment, as well as bids and proposals for subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Contractor shall hire qualified local residents and firms, whenever feasible.
- 10.6 **LIVING WAGE ORDINANCE.** Contractor shall comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code sections 22.4201 et seq., in performing its obligations and/or duties under this Agreement.
- 10.7 **DRUG-FREE WORKPLACE.**
- 10.7.1 Contractor shall comply, and require its Subcontractors to comply, with the City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952 and incorporated into this Agreement by this reference. Contractor shall certify, and require its Subcontractors to certify, that it shall provide a drug-free workplace, by submitting to the City a "Contractor Certification for a Drug-Free Workplace" form.
- 10.7.2 Contractor shall post in a prominent place at Contractor's office a statement setting forth its drug-free policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled

002219

substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violations of the prohibition.

- 10.7.3 Contractor shall establish a drug-free awareness program to inform employees about each of the following:
- a) The dangers of drug abuse in the workplace;
 - b) The policy of maintaining a drug-free workplace;
 - c) The availability of drug counseling, rehabilitation, and employee assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations.
- 10.7.4 Contractor shall ensure that all subcontracts in connection with this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Section 10.7 of this Agreement, as required by Sections 2A(1) – (3) of City Council Policy 100-17.
- 10.7.5 Contractor, and its Subcontractors, shall be individually responsible for their own drug-free workplace program.
- 10.8 **AMERICANS WITH DISABILITIES ACT.** Contractor shall comply with City Council Policy 100-04, as adopted by City Council Resolution R-282153, relating to the federally-mandated Americans with Disabilities Act [ADA]. Contractor, and its Subcontractors, shall be individually responsible for their own ADA program.
- 10.9 **STORM WATER POLLUTION PREVENTION.** Contractor shall comply, and require each of its Subcontractors to comply, with the City's Storm Water Management and Discharge Control Ordinance, codified in San Diego Municipal Code sections 43.0301 et seq., in performing its obligations and/or duties under this Agreement.
- 10.10 **EMPLOYMENT OF CITY STAFF.** Pursuant to City Council Policy 300-11, the City may, at its sole discretion, unilaterally and immediately terminate this Agreement if Contractor employs an individual, who, within twelve months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council, the Mayor, or former City Manager in connection with the selection of Contractor for the CPD Program.
- 10.11 **POLITICAL ACTIVITY.** Contractor shall not use, and require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or materials paid for with funds received pursuant to this Agreement, for political activity. The term, "political activity," shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state, or local government election.

002220

- 10.12 **BROWN ACT.** Contractor shall comply with the provisions of the Ralph M. Brown Act, codified in California Government Code sections 54950-54963.
- 10.13 **PUBLIC RECORDS ACT.** Contractor shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250 – 6270, for all documents and records relating to the activities of the District.
- 10.14 **OPERATING MANUAL.** Contractor acknowledges receipt of, and shall comply with, the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.

ARTICLE XI – (reserved)

ARTICLE XII – INSURANCE

12.1 PREREQUISITES TO COMMENCEMENT OF WORK.

- 12.1.1 Prior to the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, and prior to Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall complete each of the following:
- a) comply with Section 12.2 below regarding insurance companies;
 - b) obtain all insurance coverage required in Sections 12.3, 12.4, and 12.5 below;
 - c) obtain, and provide to the City, insurance certificates reflecting evidence of all insurance coverage required in Sections 12.3, 12.4, and 12.5 below; and
 - d) confirm that all insurance policies and insurance certificates contain the specific provisions required in Sections 12.3, 12.4, and 12.5 below.

- 12.1.2 Contractor shall not allow any Subcontractor to commence work on a subcontract in connection with this Agreement, unless and until all insurance required of the Subcontractor (as described in Sections 12.3, 12.4, 12.5, and 16.2.1 below) has been obtained.

- 12.2 **INSURANCE COMPANIES.** Contractor shall ensure that all insurance coverage required in Sections 12.3, 12.4, and 12.5 below is carried only by insurers that have been rated "A-, VI," or better, by the current A.M. Best Key Rating Guide, and that are licensed to do business in the State of California. The City will accept insurance provided

002221

by non-admitted "surplus lines" carriers, only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers.

12.3 COMMERCIAL GENERAL LIABILITY INSURANCE.

12.3.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial General Liability Insurance, written on an ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of \$1,000,000 per occurrence, subject to an annual aggregate of \$2,000,000.

12.3.2 The policy shall expressly provide that:

- a) all defense costs shall be outside the limits of the policy; and
- b) the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.

12.3.3 The policy shall be endorsed to expressly provide that:

- a) the City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds; and
- b) the policy is primary and non-contributory to any insurance that may be carried by the City.

12.3.4 There shall be no endorsement or modification of the policy limiting the scope of coverage for insured vs. insured claims, or for contractual liability.

12.4 COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.

12.4.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial Automobile Liability Insurance for all of Contractor's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence.

12.4.2 The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail

12.4.3 The policy shall be endorsed to expressly provide that The City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds.

12.5 WORKERS' COMPENSATION INSURANCE.

12.5.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Workers' Compensation Insurance for all of Contractor's employees who are subject to this Agreement, to the extent required by the State of California, providing a minimum of \$1,000,000 of employers' liability coverage.

12.5.2 The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail

12.5.3 The policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.

12.6 **ENDORSEMENTS.** All endorsements required under Sections 12.3.3, 12.4.3, and 12.5.3 above shall be in full force and effect for the entire term of this Agreement.

12.7 **CITY'S RIGHT TO REQUEST AND REVIEW CONTRACTOR'S INSURANCE POLICIES.** The City reserves its right to request, and Contractor shall immediately submit to the City upon the City's request, copies of any policy required in Sections 12.3, 12.4, and 12.5 above, and its right to review, at any time, Contractor's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are sufficient, given the level of risk associated with the services described in the Scope of Services (Exhibit A). If the City determines that any such insurance coverage, limits, deductibles, and/or self-insured retentions is insufficient, the City and Contractor shall amend this Agreement to increase such insurance coverage, limits, deductibles, and/or self-insured retentions to a sufficient level, as determined by the City, and Contractor shall comply with any such amendment.

12.8 **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** All deductibles and self-insured retentions on any policy shall be the responsibility of Contractor, and shall be disclosed on the insurance certificates and acceptable to the City at the time the required evidence of insurance is provided to the City.

12.9 **CONTRACTOR'S LIABILITY NOT LIMITED TO INSURANCE COVERAGE.** Contractor's liability, including, but not limited to, Contractor's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Article.

12.10 **MODIFICATIONS AFFECTING CITY'S EXPOSURE TO LOSS.** Contractor shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of this Agreement.

12.11 **ADDITIONAL INSURANCE.** Contractor may obtain additional insurance not required by this Agreement.

002223

12.12 **EXPIRATION OF POLICIES.** At least thirty calendar days prior to the expiration of each insurance policy required in Sections 12.3, 12.4, and 12.5 above, Contractor shall provide the City an insurance certificate (accompanied by all required endorsements), showing that a new or extended policy has been obtained which meets the requirements of this Agreement.

12.13 **REQUIREMENT TO MAINTAIN INSURANCE COVERAGE.** Contractor's maintenance of the insurance coverage required in Sections 12.3, 12.4, and 12.5 above is a material provision of this Agreement. Any failure by Contractor to maintain or renew such coverage, or to provide the City evidence of renewal, during the term of this Agreement, shall constitute a material breach of contract.

ARTICLE XIII – SUSPENSION OR DISALLOWANCE OF PAYMENTS; TERMINATION

13.1 SUSPENSION OR DISALLOWANCE OF PAYMENTS.

13.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:

- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
- b) disallowing funds for all or part of the cost of the activity or action not in compliance.

13.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

13.2 TERMINATION FOR ANY REASON.

13.2.1 Notwithstanding the term of this Agreement as specified in Section 3.1 above, the City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days written notice of the termination to the other party (delivered in accordance with the provisions of Article XVII below).

13.2.2 In the event this Agreement is terminated pursuant to Section 13.2.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any

002224

unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, no later than the termination date of this Agreement.

13.3 TERMINATION FOR CURABLE DEFAULT.

- 13.3.1 Except as provided in Section 13.4.1 below, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor (delivered in accordance with the provisions of Article XVII below), if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.
- 13.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in Section 13.3.1 above.
- 13.3.3 In the event this Agreement is terminated pursuant to Section 13.3.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

13.4 TERMINATION FOR INCURABLE DEFAULT.

- 13.4.1 The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor (delivered in accordance with the provisions of Article XVII below), for reasons including, but not limited to, each of the following:
- a) Contractor makes material misrepresentations in regard to information furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;
 - b) Contractor, or any of its officers or directors, becomes subject to any pending court action or proceeding with respect to the performance of Contractor's obligations and/or duties under this Agreement (or any prior agreement with the City to administer the District), which may jeopardize or adversely affect the Parties' understanding of, and/or Contractor's

002225

performance of its obligations and/or duties under, this Agreement;

- c) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or
- d) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Plan that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

13.4.2 In the event this Agreement is terminated pursuant to Section 13.4.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

13.5 **CONTINUING RESPONSIBILITIES.** In the event this Agreement is terminated, Contractor shall complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Contractor shall be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination. By accepting payment for completion, as well as filing and delivering documents as called for in this Article, Contractor discharges the City of all of the City's payment obligations and liabilities under this Agreement.

13.6 **RIGHTS AND REMEDIES.** The City's termination of this Agreement shall terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

13.7 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and the City elects not to enter into a subsequent agreement with Contractor to administer the District for the following fiscal year, Contractor shall deliver to the City:

- a) all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking

002226

meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the expiration date of this Agreement; and

- b) the Annual Report, in accordance with Section 9.3.3 above.

ARTICLE XIV – INFORMAL DISPUTE RESOLUTION; ATTORNEY’S FEES; MANDATORY ASSISTANCE

- 14.1 **INFORMAL DISPUTE RESOLUTION.** If the City and Contractor have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice to the other party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five calendar days of the second party’s receipt of such notice, or at such time thereafter as is reasonable under the circumstances.
- 14.2 **ATTORNEY’S FEES.** If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of, or based upon, this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in the action or proceeding shall be entitled to recovery of its costs and reasonable attorney’s fees, in addition to any other award made in such action or proceeding.
- 14.3 **MANDATORY ASSISTANCE.**
 - 14.3.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to, the Services provided under this Agreement, upon the City’s request, Contractor, its agents, officers, and employees shall assist the City in resolving the dispute or litigation. Contractor’s assistance to the City, hereinafter referred to as “Mandatory Assistance,” includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation.
 - 14.3.2 The City will reimburse Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and/or employees, Contractor shall reimburse the City for all fees paid to Contractor, its agents, officers, and/or employees for Mandatory Assistance.

002227

- 14.3.3 In providing the City with Mandatory Assistance, Contractor, its agents, officers, and/or employees may incur expenses and/or costs. Any attorney's fees Contractor may incur as a result of providing Mandatory Assistance are not reimbursable. This provision does not in any way affect the Parties' rights to seek attorney's fees under Section 14.2 above.

ARTICLE XV – INDEMNIFICATION

- 15.1 **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** Contractor shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, but not limited to, injury to Contractor's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Contractor, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required or authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. However, Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its elected officials, departments, officers, employees, representatives, and/or agents. The City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay the City for all costs related thereto, including, without limitation, attorney's fees and costs.
- 15.2 **ENFORCEMENT COSTS.** Contractor shall pay the City any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 15.1 above.

ARTICLE XVI – SUBCONTRACTORS

- 16.1 **SUBCONTRACTORS LIST AND SUBCONTRACTS.**
- 16.1.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:
- a) a completed Subcontractors List, listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement; and
 - b) a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.

002228

The City will forward the Subcontractors List to EOCP.

16.1.2 If, during the term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days of the date of any subcontract for such services, provide the City with each of the following:

- a) a copy of the subcontract, including the scope of work, along with a written statement describing the justification for the additional Subcontractor services, and an itemization of all costs for the additional Subcontractor services; and
- b) an updated Subcontractors List that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional Subcontractor services.

The City will forward the updated Subcontractors List to EOCP.

16.1.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit C. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.

16.2 **REQUIRED LANGUAGE.** Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain the information described in Sections 5.1, 8.1, 8.2, 8.3, 8.4, 10.1, 10.3, 10.4, 10.6, 10.7, 10.9, and 10.11 above, and provide as follows:

16.2.1 Subcontractor shall obtain all insurance coverage required in Sections 12.3, 12.4, and 12.5 of the City's Agreement with Contractor, and shall maintain, in full force and effect, such insurance coverage during any and all work performed in connection with the City's Agreement with Contractor. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.

16.2.2 In any dispute between Contractor and Subcontractor pertaining to the City's Agreement with Contractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. Contractor shall defend and indemnify the City (as described in Section 15.1 of City's Agreement with Contractor) in any dispute between Contractor and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.

16.3 **CONTRACT ACTIVITY REPORT.** Within ten calendar days of a written request by the City, Contractor shall provide the City:

- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and

002229

b) an invoice from each Subcontractor listed in the Contract Activity Report.

- 16.4 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

ARTICLE XVII – NOTICE

- 17.1 In all cases where written notice is required under this Agreement, service of such notice shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement.
- 17.2 For the purposes of this Agreement, unless otherwise modified by written amendment to this Agreement, notice to the City shall be addressed to:

City of San Diego
Economic Development Division
Attn: Scott Kessler, Deputy Director
1200 Third Ave., Suite 1400
San Diego, CA 92101

Notice to Contractor shall be addressed as specified in Exhibit A.

ARTICLE XVIII – CONFIDENTIALITY OF INFORMATION

- 18.1 All information provided by the City to Contractor in connection with this Agreement is for the sole use of Contractor. Contractor shall not release any such information to any third party, without the prior written consent of the City.
- 18.2 Section 18.1 above does not apply to information that:
- a) was publicly known, or otherwise known to Contractor, at the time the information was provided to Contractor by the City;
 - b) subsequently becomes publicly known, through no act or omission of Contractor;
 - c) becomes known to Contractor from a source or means other than the City; or
 - d) is considered a “public record,” pursuant to the California Public Records Act (California Government Code sections 6250 – 6270).

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

002230

ARTICLE XIX – ACKNOWLEDGMENT OF CITY; PRODUCT ENDORSEMENTS.

- 19.1 **ACKNOWLEDGMENT OF THE CITY IN CONTRACTOR’S DOCUMENTS.** Contractor shall acknowledge the City’s financial support in all documents prepared pursuant to this Agreement and on Contractor’s website, if any. Such acknowledgment shall be prominently displayed on all such documents and on Contractor’s website. When any such document and/or website expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the document and/or website does not necessarily reflect the policy of the City of San Diego.
- 19.2 **PRODUCT ENDORSEMENTS.** Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.

ARTICLE XX – MISCELLANEOUS PROVISIONS

- 20.1 **MUNICIPAL POWERS.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 20.2 **GOVERNING LAW.** The terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State of California. Any newly adopted rules and regulations or changes to existing rules and regulations shall become effective for the administration of this Agreement upon receipt by the City, and written notice of such newly adopted rules and regulations or changes to existing rules and regulations to Contractor.
- 20.3 **JURISDICTION AND VENUE.** The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State Court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Article XIV above.
- 20.4 **INTEGRATED AGREEMENT.** This Agreement, and the Exhibits and references incorporated into this Agreement, fully express all understandings of the Parties concerning the matters covered in this Agreement. All prior negotiations and agreements are merged into this Agreement.
- 20.5 **CHANGES OR AMENDMENTS TO AGREEMENT.** Should circumstances require that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be accomplished only as follows:
- a) a change to any of the terms or conditions of this Agreement, that does not affect the total payments herein, shall be accomplished by a written amendment to the Agreement, signed by the authorized representatives of the City and Contractor;
 - b) a change which affects the total payments specified under this Agreement, shall be accomplished by a written amendment to this Agreement, provided that:

002231

- 1) if the change results in a total payment to Contractor of \$250,000 or more, then such amendment shall be approved by the City Council, and signed by the authorized representatives of the City and Contractor; or
- 2) if the change results in a total payment to Contractor of less than \$250,000, then such amendment shall be signed by the authorized representatives of the City and Contractor.

20.6 **COVENANTS AND CONDITIONS.** All provisions herein, expressed as either covenants or conditions on the part of the City or Contractor to be performed or observed, shall be deemed to be both covenants and conditions.

20.7 **NO WAIVER.** No failure of either the City or Contractor to insist upon the strict performance by the other of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any term, covenant, or condition of this Agreement, shall constitute a waiver of any such breach of such term, covenant, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every term, covenant, and condition, herein shall continue in full force and effect to any existing or subsequent breach.

20.8 **SUCCESSORS IN INTEREST.** This Agreement, and all rights, obligations, and/or duties under this Agreement, shall be in full force and effect, whether or not any party to the Agreement has been succeeded by another entity, and all rights, obligations, and/or duties under this Agreement shall be vested and binding on any party's successor in interest.

20.9 **SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

20.10 **CONFLICTS BETWEEN TERMS.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, then the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

20.11 **DRAFTING AMBIGUITIES.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.

002232

- 20.12 **SIGNING AUTHORITY.** The representative for each party signing on behalf of a corporation, partnership, joint venture, or governmental entity declares that he or she has obtained actual authority to sign on behalf of the corporation, partnership, joint venture, or entity, and shall hold the other party or parties hereto harmless if it is later determined that such authority does not exist.
- 20.13 **COUNTERPARTS.** This Agreement may be executed in counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had executed the same page.
- 20.14 **HEADINGS.** All headings in this Agreement are for convenience only, and shall not affect the interpretation of this Agreement.
- 20.15 **EXHIBITS INCORPORATED.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

IN WITNESS WHEREOF, this Agreement is executed by The City of San Diego, acting by and through its Mayor, pursuant to Resolution No. R-_____, authorizing such execution, and by Contractor.

Dated this _____ day of _____, 200__.

The City of San Diego

Greater Golden Hill
Community Development Corporation

By _____
W. Downs Prior
Principal Contract Specialist

By _____
Robert Fanella
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this
_____ day of _____, 200__.

MICHAEL J. AGUIRRE
City Attorney

By _____
Michael D. Neumeyer
Deputy City Attorney

002233

COMMUNITY PARKING DISTRICT PROGRAM

The following Scope of Services outlines of the activities/services for the contract period of July 1, 2007 to June 30, 2008. The outline includes:

- a.) the overarching goals of the Contractor/Agency,
 - b.) b.) the program objectives (described in measurable objectives as appropriate),
 - and c.) a section summarizing operational expenses (Exhibit B).
-

Greater Golden Hill CDC on behalf of the Mid-City Parking District Goals:

As an independent sub area under the Mid-City Community Parking District the goal of the Greater Golden Hill CDC is to address the parking problems in its business and residential areas and improve this area of the Mid-City Community Parking District by increasing parking options, ensuring safe, friendly streets, and promoting economic revitalization.

Program Objectives:

1. The GGHCDC will work directly with the City of San Diego's Capital Improvement Projects Division and Traffic Engineering to implement the following toward completion of the 25th Street Renaissance Project:
 - a. Finalize Phase II of the Golden Hill Parking and Mobility Strategic Plan for 25th Street.
 - b. Create cost estimates for each action/project;
 - c. General scope of work scenario for each action or project which clearly
 - d. Create a plan that identifies all steps involved in the approval process prior to implementation;
2. Complete engineering plans which include an increase of on street parking and including angled on-street parking by 10 parking spaces;
3. Complete traffic and pedestrian signage plans;
4. Complete sidewalk and/or curb and gutter plans
5. Complete Street and/or pedestrian light plans and improvements; and
6. Complete street tree and streetscape plans.

002234

COMMUNITY PARKING DISTRICT PROGRAM
Fiscal Year 2008

Contractor: Greater Golden Hill CDC for Mid-City Parking District

Mailing Address: 1235 28th Street San Diego, CA 92102

Fiscal Year End: June 30, 2008

Greater Golden Hill CDC for the Mid-City Parking District: Budget FY08

Expenditure Categories	Total FY08 Organization Budgeted Expenses	
Strategic Planning	\$	5,000
Public Information	\$	-
Public Improvements	\$	5,000
Streetscape (Previously budgeted FY07 for 25th Street)	\$	17,484
Administration	\$	771
Contingency	\$	1,197
TOTAL	\$	29,452

002235

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND
UNIVERSITY HEIGHTS COMMUNITY DEVELOPMENT CORPORATION**

This Agreement [Agreement] is entered into by the City of San Diego, a municipal corporation [City] and University Heights Community Development Corporation [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, the City Council designated specific geographic areas (Mid-City Community Plan Area, Golden Hill Community Plan Area, El Cajon Business Improvement District, Adams Avenue Business Improvement District, North Park Business Improvement District, and City Heights Business Improvement District) as the Mid-City Community Parking District [District]; and

WHEREAS, on December 2, 1997, the City Council adopted Resolution No. R-289522, in which the City Council designated the Mid-City Parking Meter Advisory Board as the Advisory Board for the District; and

WHEREAS, the Mid-City Parking Meter Advisory Board recommended and approved the Memorandum of Understanding that was entered into by El Cajon Boulevard Business Improvement Association, University Heights Community Development Corporation, and Greater Golden Hill Community Development Corporation for each of the non-profit corporations to act as the responsible fiscal entity to carry out the CPD Program for their respective geographic portions of the District; and

WHEREAS, pursuant to the approved Memorandum of Understanding, Contractor shall act as the responsible fiscal entity for its geographic portion of the District; and

WHEREAS, on _____, _____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2008 to be carried out by Contractor;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

002236

ARTICLE I - INCORPORATION OF RECITALS

- 1.1 The Recitals set forth above are true and correct, and are hereby incorporated in full and made a part of this Agreement by this reference.

ARTICLE II - DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

- 2.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.
- 2.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in Exhibit B.
- 2.3 Plan Revenue – All revenue that accrues to Contractor as a result of its receipt of funds provided under this Agreement, including interest earned on these funds deposited in an interest bearing account.
- 2.4 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under this Agreement.

ARTICLE III – EFFECTIVE DATE; TERM OF AGREEMENT

- 3.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2007 and continue for one year until June 30, 2008, unless terminated earlier in accordance with the terms of this Agreement.
- 3.2 This Agreement may be extended for up to ninety additional calendar days, pursuant to Section 20.5 below.
- 3.3 Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

ARTICLE IV – CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE

- 4.1 The City's Economic Development Division [Division] is the contract administrator for this Agreement. The City will identify a designated representative for the purposes of this Agreement.
- 4.2 The City's designated representative shall communicate with Contractor on all matters related

002237

to the administration of this Agreement and Contractor's performance of its obligations and duties rendered hereunder. Contractor shall work solely under the direction of the City's designated representative in performing Contractor's obligations and duties under this Agreement.

- 4.3 When this Agreement refers to communications to or with the City, those communications shall be with the designated representative, unless the designated representative or the Agreement specifies otherwise. When this Agreement refers to an act or approval to be performed by the City, that act or approval shall be performed by the Mayor (or his designee), unless the Agreement specifies otherwise.
- 4.4 The City, at its sole discretion, may change its designated representative at any time, and if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending change.

ARTICLE V – INDEPENDENT CONTRACTOR; ASSIGNMENT; DESIGNATED REPRESENTATIVE

- 5.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Contractor shall follow the direction of the City concerning the end results of the performance. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.
- 5.2 Because this Agreement is entered into by the City in reliance upon Contractor's qualifications, experience, and personnel identified, Contractor shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any assignment in violation of this Section is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.

- 5.3 Contractor shall identify a designated representative for the purposes of this Agreement. In the event Contractor changes its designated representative for the purposes of this Agreement, Contractor shall notify the City of the new designated representative within ten calendar days of the date of such change.

ARTICLE VI - OBLIGATIONS OF CONTRACTOR

- 6.1 Contractor shall perform the services described in the Scope of Services (Exhibit A), in accordance with the Plan Budget (Exhibit B) and all other terms and conditions of this Agreement.
- 6.2 The Scope of Services (Exhibit A) shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

ARTICLE VII – PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT; PLAN REVENUE

7.1 PLAN BUDGET AND EXPENDITURES.

- 7.1.1 The Plan Budget (Exhibit B) shall be in sufficient detail to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.
- 7.1.2 Funds provided by the City to Contractor under this Agreement may be used only for staffing, education and outreach, general operations, research activities (including Subcontractor expenses), design and engineering expenses, and other reasonable and appropriate costs related to Contractor's services listed in the Scope of Services (Exhibit A) and the Plan Budget (Exhibit B). Any reimbursable expenditures incurred by Contractor shall be essential to the proper and efficient performance of those services required by this Agreement and shall fall within the prescribed limitations of this Section, the Operating Manual, and applicable laws, rules, and regulations governing this Agreement. Any other expenditures, including travel, meals, lodging, and entertainment costs, or any alcoholic beverages, will not be reimbursable under this Agreement and shall be borne solely by Contractor.
- 7.1.3 The City will not reimburse Contractor for, and Contractor shall not request reimbursement for, any expenditure that is ineligible under, this Agreement, the Plan Budget (Exhibit B), the Operating Manual, and/or Counsel Policy 100-18.
- 7.1.4 Contractor shall not use the funds provided under this Agreement in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

7.2 ADVANCES.

7.2.1 At the written request of Contractor, the City may make an advance payment to Contractor in an amount not to exceed \$9,000 to meet the cost of salaries and operating expenses during the first eight weeks of Contractor's performance under this Agreement. Repayment of such an advance may be charged by the City against the last two months of submitted reimbursement requests. The City will, at its sole discretion, either require Contractor to return any unexpended funds from the advance payment to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unexpended funds from the advance to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unexpended funds from the advance payment upon the termination date of this Agreement.

7.2.2 At the written request of Contractor, the City may, on a monthly basis, provide parking meter cards and/or deposit reload time (in dollars) onto Contractor's parking meter card reload time dispenser, with a total value not to exceed \$1,000 per month. Contractor acknowledges that any provision of parking meter cards, reload time (in dollars), and/or the proceeds from the sale of such cards and/or reload time is an advance to Contractor of funds under this Agreement, which Contractor shall only use to pay for eligible expenditures made in connection with this Agreement. The City will, at its sole discretion, either require Contractor to return any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time within ten calendar days of the termination date of this Agreement.

7.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed \$188,355, as set forth in the Plan Budget (Exhibit B). Any amount not expended under this Agreement, shall roll over to the next fiscal year allocation of funds, subject to the City Council's annual review and approval of community parking district implementation plans and authorization of further contracts to administer the District.

002240

7.4 **ADDITIONAL FUNDING SOURCES.** If Contractor has received or does receive additional funding for the Plan from a source or sources other than the City, the use of which requires that Contractor make an accounting to, or be subject to, an audit by such other source, then Contractor shall charge Plan expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

7.5 **PAYMENT SCHEDULE.**

- 7.5.1 In the event Contractor accrues cash advances and/or proceeds from the sale of parking meter cards and/or reload time (in dollars) in an amount that exceeds \$2,000, Contractor shall apply cash advances and/or proceeds from the sale of parking meter cards and/or reload time toward eligible expenditures, before requesting from the City any additional parking meter cards, reload time, or reimbursement for eligible expenditures.
- 7.5.2 Contractor shall not accrue parking meter cards, reload time (in dollars) or any combination thereof, in an amount that exceeds \$2,000.
- 7.5.3 Contractor shall request reimbursement from the City no more than once per month during the term of this Agreement.
- 7.5.4 Contractor shall, by the fifteenth day of each month, submit to the City a report (original plus one copy) documenting Contractor's activities, income, and expenditures for the preceding month, along with copies of all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed, as described in the Operating Manual. In addition, Contractor shall specify in the report the amount of expenditures requested for reimbursement. Contractor shall ensure that each report states: "Contractor certifies that staff time expended and expenses submitted are for services performed in accordance with the provisions of Contractor's Community Parking District Agreement with the City," and that the report is signed by an officer of Contractor.
- 7.5.5 Any expenditure contained in the report described in Section 7.5.4 above that is not consistent with the Plan Budget (Exhibit B), or is not supported with proper documentation as described in Section 7.5.4 above, shall be considered an ineligible expenditure.
- 7.5.6 Within thirty calendar days of the City's receipt of a properly completed Reimbursement Request from Contractor, the City will verify the eligibility of each expenditure described in the Reimbursement Request, and reimburse Contractor for all eligible expenditures (as described in Section 7.1.2 above), less those eligible expenditures already paid for by Contractor with the proceeds from the sale of parking meter cards and/or reload time (pursuant to Section 7.5.1

002241

above), and less any expenditures deemed ineligible by the City but already paid for by Contractor with such proceeds.

- 7.5.7 The City will withhold the final payment to Contractor until Contractor has accounted for the cash advance, parking meter cards, reload time (in dollars), proceeds from the sale of such cards and reload time, as well as all expenditures made by Contractor in connection with this Agreement, and Contractor has submitted to the City a Final Report (and any other reports requested by the City) summarizing the services performed by Contractor pursuant to this Agreement, notwithstanding the provisions of Section 7.2 above.

7.6 DIRECT PAYMENTS

- 7.6.1 The City may, at its sole discretion, make a direct payment from Contractor's Community Parking District Revenue Fund [CPD Revenue Fund] on behalf of Contractor for expenses in excess of \$5,000 to facilitate capital improvement projects.
- 7.6.2 The City may, at the written request of Contractor, execute an interfund transfer (or other action) to effect payment from Contractor's CPD Revenue Fund to another City fund for eligible expenses, such as the purchase of parking meter cards and refill time.
- 7.6.3 The City may, at the written request of Contractor, make a direct payment from Contractor's CPD Revenue Fund to a Subcontractor for eligible expenses, provided:
- a) the amount of the direct payment exceeds fifty percent of Contractor's outstanding advance; and
 - b) the subcontract, furnished to the City, complies with the requirements set forth in Article XVI below.

7.7 PLAN REVENUE. It is anticipated that some of Contractor's services (including capital improvement projects) may generate substantial Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:

- a) to repay any debt incurred and/or secured by the specific project that generates the revenue;
- b) to pay for operational costs of the project;
- c) to pay for maintenance costs of the project; and/or
- d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services (Exhibit A) and Plan Budget (Exhibit B).

Contractor shall account for Plan Revenue separately in the account established pursuant to Section 8.2 below. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

- 7.8 **BUDGET ADJUSTMENTS.** Contractor shall have authority to adjust the line items of its Plan Budget (Exhibit B) by up to five percent per line without securing prior City approval. Any Plan Budget adjustment greater than five percent shall be considered an Amendment to this Agreement and requires City approval, as provided in Section 20.5 below.

ARTICLE VIII - DATA AND RECORDS

- 8.1 **GENERAL.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) during the term of this Agreement.
- 8.2 **ACCOUNTING RECORDS.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Plan-related accounting records, documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.
- 8.3 **INSPECTION AND PHOTOCOPYING.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Plan-related data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties under this Agreement. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law.
- 8.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration date of this Agreement. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or its authorized agents, to examine all such data and records, for the purposes described in Sections 8.2 and 8.3 above. After the storage period has expired, or all audit findings

have been resolved, whichever is later, Contractor shall provide the City with thirty calendar days written notice of its intent to dispose of any Plan-related data and/or records.

- 8.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by the City, the originals of all such data and records to the City. Contractor may retain copies of all data and records delivered to the City.
- 8.6 **OWNERSHIP OF DOCUMENTS.** Once Contractor has received any reimbursement from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of the City. The City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Plan, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

ARTICLE IX – AUDITS; FINANCIAL DISCLOSURES; OTHER REPORTS

- 9.1 **AUDITS.** Contractor shall ensure that Annual Single Audits and Financial Statement Audits are completed by a Certified Public Accountant. Individual projects funded by the City shall be clearly identified in the audit reports, as well as the dollar amount allocated to the Plan by the City.
- 9.1.1 In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, Contractors expending \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year, shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Contractor shall ensure that Single Audits are completed within 180 calendar days of the expiration date of this Agreement. Contractors completing audits by calendar year (rather than fiscal year) shall ensure that Single Audits are completed within 180 calendar days of December 31st. Contractor shall provide the City with a copy of the Single Audit within fifteen calendar days of Contractor's receipt of the audit.
- 9.1.2 Contractors receiving \$75,000 or more in federal, state, and/or City funds shall have Financial Statement Audits prepared in accordance with GAAP and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards [GAAS]. This audit shall include the following statements:
- a) a statement of expenditure of City funds by program, to be identified

002244

in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts;

- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor; and
- c) a statement certifying compliance with all terms and conditions of the City's contract with Contractor, and that all required reports and disclosures have been submitted, completed by an executive officer of Contractor.

Contractor shall provide the City a copy of the Financial Statement Audit within 150 calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

- 9.1.3 If Contractor is subject to an audit from a source other than the City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s).

9.2 **FINANCIAL DISCLOSURES.** Contractors receiving \$10,000 or more, but less than \$75,000, in federal, state, and/or City funds shall provide the City copies of true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year. Specifically, Contractor shall submit the following:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts; and
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor.

Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

9.3 **OTHER REPORTS**

- 9.3.1 Contractors receiving less than \$10,000 in federal, state, and/or City funds shall provide a report of how the funds were used during the contract period. Contractor shall provide the City with a copy of this report within thirty calendar days of the expiration date of this Agreement. If Contractor is also in receipt of an Annual Single Audit or Financial Statement Audit, Contractor shall submit a copy of such audit to the City within fifteen calendar days of Contractor's receipt of the audit.

002245

- 9.3.2 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date, a narrative of proposed activities for the coming fiscal year, as well as a proposed budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).
- 9.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals, accomplishments, and expenditures for Fiscal Year 2008. The report shall be delivered to the City by November 30, 2008.

ARTICLE X – COMPLIANCE WITH LAWS AND POLICIES

- 10.1 **GENERAL.** Contractor shall comply, and require each of its Subcontractors to comply, with all applicable laws, rules, regulations, ordinances, resolutions, permits, and policies of the federal, state, and local governments, as they pertain to this Agreement. In addition, Contractor shall immediately comply, and require each of its Subcontractors to immediately comply, with all directives issued by the City, or its authorized representatives, under authority of any law, statute, ordinance, rule, or regulation.
- 10.2 **CONFLICT OF INTEREST.**
- 10.2.1 Contractor shall comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:
- a) California Government Code sections 1090 et. seq., and 81000 et. seq.;
 - b) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
 - c) The City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
 - d) The "CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NON-PROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO" (Exhibit C).
- 10.2.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.
- 10.2.3 If, in performing its obligations and duties set forth in this Agreement, Contractor makes, or participates in, a "governmental decision," as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City that would

otherwise be performed by a City employee holding a position specified in the City's conflict of interest regulations, Contractor shall be subject to the City's conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing Contractor's relevant financial interests.

10.2.3.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that Contractor is subject to the City's conflict of interest regulations. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to the City's conflict of interest regulations.

10.2.3.2 If the City requires Contractor to file a statement of economic interests as a result of Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall be considered a "City Official," subject to the provisions of the City's Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

10.2.4 Contractor shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.

10.2.5 Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.2.6 If Contractor violates any conflict of interest law, or any of the provisions of Section 10.2 of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit C. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as a result of the violation.

10.3 EQUAL EMPLOYMENT OPPORTUNITY.

10.3.1 Contractor shall comply, and require its Subcontractors to comply, with the

002247

City's Equal Employment Opportunity [EEO] Outreach Program, codified in San Diego Municipal Code sections 22.2701 - 22.2707. Contractor and all of its Subcontractors are individually responsible for abiding by its contents.

- 10.3.2 Contractor shall comply, and require each of its Subcontractors to comply, with Title VII of the Civil Rights Act of 1964, as amended (Executive Orders 11246, 11375, and 12086), California Fair Employment Practices Act, and any other applicable federal and state laws and/or regulations hereinafter enacted.
 - 10.3.3 Contractor shall not discriminate, and require each of its Subcontractors not to discriminate, on the basis of race, gender, religion, national origin, sexual orientation, age, or disability, in performing any obligation or duty in connection with this Agreement, including, but not limited to, the provision of services, privileges, facilities, advantages, and accommodations.
 - 10.3.4 Contractor, and each of its Subcontractors, shall provide equal opportunity in all employment practices.
 - 10.3.5 Contractor shall submit to the City, a current Work Force Report, and if requested by the Equal Opportunity Contracting Program [EOCP] staff, an Equal Employment Opportunity Plan, as required by San Diego Municipal Code section 22.2705.
 - 10.3.6 Contractor understands that compliance with the EEO provisions shall be monitored and reviewed by the City's EOCP staff.
 - 10.3.7 Contractor's failure to comply with the above requirements, or its submittal of false information in response to these requirements, may result in any of the following: the withholding of progress payments until Contractor complies with the above; termination of this Agreement; debarment; and/or other sanctions, including suspension from participating in future City contracts (as a prime or Subcontractor) for a period of not less than one year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this Section shall prohibit Contractor from participating in future City contracts; until all penalties have been satisfied.
 - 10.3.8 Nothing in this Section shall be interpreted to hold Contractor liable for any discriminatory practice of its Subcontractors.
- 10.4 **NON-DISCRIMINATION IN CONTRACTING.**
- 10.4.1 Contractor shall comply, and require each of its Subcontractors to comply, with the City's Nondiscrimination in Contracting Ordinance, codified in San Diego Municipal Code sections 22.3501 - 22.3517,

002248

- 10.4.2 Contractor shall not discriminate, and require its Subcontractors not to discriminate, on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability, in the solicitation, selection, hiring, or treatment of its employees, any applicants for employment, any Subcontractors, vendors, or suppliers.
- 10.4.3 Within sixty calendar days of a request by the City, Contractor shall provide the City a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor shall fully cooperate in any investigation conducted by the City, pursuant to the City's Nondiscrimination in Contracting Ordinance, referenced above.
- 10.4.4 Violation of any provision of Section 10.4 shall be considered a material breach of this Agreement, and may result in remedies being ordered against Contractor up to, and including, termination of this Agreement, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance.
- 10.5 **LOCAL BUSINESS AND EMPLOYMENT.** Contractor acknowledges that the City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Contractor shall, to the extent reasonably possible, solicit applications for employment, as well as bids and proposals for subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Contractor shall hire qualified local residents and firms, whenever feasible.
- 10.6 **LIVING WAGE ORDINANCE.** Contractor shall comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code sections 22.4201 et seq., in performing its obligations and/or duties under this Agreement.
- 10.7 **DRUG-FREE WORKPLACE.**
- 10.7.1 Contractor shall comply, and require its Subcontractors to comply, with the City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952 and incorporated into this Agreement by this reference. Contractor shall certify, and require its Subcontractors to certify, that it shall provide a drug-free workplace, by submitting to the City a "Contractor Certification for a Drug-Free Workplace" form.
- 10.7.2 Contractor shall post in a prominent place at Contractor's office a statement setting forth its drug-free policy, notifying employees that the unlawful

002249

manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violations of the prohibition.

- 10.7.3 Contractor shall establish a drug-free awareness program to inform employees about each of the following:
- a) The dangers of drug abuse in the workplace;
 - b) The policy of maintaining a drug-free workplace;
 - c) The availability of drug counseling, rehabilitation, and employee assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations.
- 10.7.4 Contractor shall ensure that all subcontracts in connection with this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Section 10.7 of this Agreement, as required by Sections 2A(1) – (3) of City Council Policy 100-17.
- 10.7.5 Contractor, and its Subcontractors, shall be individually responsible for their own drug-free workplace program.
- 10.8 **AMERICANS WITH DISABILITIES ACT.** Contractor shall comply with City Council Policy 100-04, as adopted by City Council Resolution R-282153, relating to the federally-mandated Americans with Disabilities Act [ADA]. Contractor, and its Subcontractors, shall be individually responsible for their own ADA program.
- 10.9 **STORM WATER POLLUTION PREVENTION.** Contractor shall comply, and require each of its Subcontractors to comply, with the City's Storm Water Management and Discharge Control Ordinance, codified in San Diego Municipal Code sections 43.0301 et seq., in performing its obligations and/or duties under this Agreement.
- 10.10 **EMPLOYMENT OF CITY STAFF.** Pursuant to City Council Policy 300-11, the City may, at its sole discretion, unilaterally and immediately terminate this Agreement if Contractor employs an individual, who, within twelve months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council, the Mayor, or former City Manager in connection with the selection of Contractor for the CPD Program.
- 10.11 **POLITICAL ACTIVITY.** Contractor shall not use, and require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or materials paid for with funds received pursuant to this Agreement, for political activity. The term, "political activity," shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state, or local government election.

002250

- 10.12 **BROWN ACT.** Contractor shall comply with the provisions of the Ralph M. Brown Act, codified in California Government Code sections 54950-54963.
- 10.13 **PUBLIC RECORDS ACT.** Contractor shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250 – 6270, for all documents and records relating to the activities of the District.
- 10.14 **OPERATING MANUAL.** Contractor acknowledges receipt of, and shall comply with, the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.

ARTICLE XI – (reserved)

ARTICLE XII – INSURANCE

12.1 PREREQUISITES TO COMMENCEMENT OF WORK.

- 12.1.1 Prior to the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, and prior to Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall complete each of the following:
- a) comply with Section 12.2 below regarding insurance companies;
 - b) obtain all insurance coverage required in Sections 12.3, 12.4, and 12.5 below;
 - c) obtain, and provide to the City, insurance certificates reflecting evidence of all insurance coverage required in Sections 12.3, 12.4, and 12.5 below; and
 - d) confirm that all insurance policies and insurance certificates contain the specific provisions required in Sections 12.3, 12.4, and 12.5 below.
- 12.1.2 Contractor shall not allow any Subcontractor to commence work on a subcontract in connection with this Agreement, unless and until all insurance required of the Subcontractor (as described in Sections 12.3, 12.4, 12.5, and 16.2.1 below) has been obtained.

- 12.2 **INSURANCE COMPANIES.** Contractor shall ensure that all insurance coverage required in Sections 12.3, 12.4, and 12.5 below is carried only by insurers that have been rated "A-, VI," or better, by the current A.M. Best Key Rating Guide, and that are licensed to do business in the State of California. The City will accept insurance provided

002251

by non-admitted "surplus lines" carriers, only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers.

12.3 COMMERCIAL GENERAL LIABILITY INSURANCE.

12.3.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial General Liability Insurance, written on an ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of \$1,000,000 per occurrence, subject to an annual aggregate of \$2,000,000.

12.3.2 The policy shall expressly provide that:

- a) all defense costs shall be outside the limits of the policy; and
- b) the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.

12.3.3 The policy shall be endorsed to expressly provide that:

- a) the City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds; and
- b) the policy is primary and non-contributory to any insurance that may be carried by the City.

12.3.4 There shall be no endorsement or modification of the policy limiting the scope of coverage for insured vs. insured claims, or for contractual liability.

12.4 COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.

12.4.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial Automobile Liability Insurance for all of Contractor's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence.

12.4.2 The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail

12.4.3 The policy shall be endorsed to expressly provide that The City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds.

002252

12.5 WORKERS' COMPENSATION INSURANCE.

- 12.5.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Workers' Compensation Insurance for all of Contractor's employees who are subject to this Agreement, to the extent required by the State of California, providing a minimum of \$1,000,000 of employers' liability coverage.
- 12.5.2 The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail
- 12.5.3 The policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.
- 12.6 **ENDORSEMENTS.** All endorsements required under Sections 12.3.3, 12.4.3, and 12.5.3 above shall be in full force and effect for the entire term of this Agreement.
- 12.7 **CITY'S RIGHT TO REQUEST AND REVIEW CONTRACTOR'S INSURANCE POLICIES.** The City reserves its right to request, and Contractor shall immediately submit to the City upon the City's request, copies of any policy required in Sections 12.3, 12.4, and 12.5 above, and its right to review, at any time, Contractor's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are sufficient, given the level of risk associated with the services described in the Scope of Services (Exhibit A). If the City determines that any such insurance coverage, limits, deductibles, and/or self-insured retentions is insufficient, the City and Contractor shall amend this Agreement to increase such insurance coverage, limits, deductibles, and/or self-insured retentions to a sufficient level, as determined by the City, and Contractor shall comply with any such amendment.
- 12.8 **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** All deductibles and self-insured retentions on any policy shall be the responsibility of Contractor, and shall be disclosed on the insurance certificates and acceptable to the City at the time the required evidence of insurance is provided to the City.
- 12.9 **CONTRACTOR'S LIABILITY NOT LIMITED TO INSURANCE COVERAGE.** Contractor's liability, including, but not limited to, Contractor's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Article.
- 12.10 **MODIFICATIONS AFFECTING CITY'S EXPOSURE TO LOSS.** Contractor shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of this Agreement.
- 12.11 **ADDITIONAL INSURANCE.** Contractor may obtain additional insurance not required by this Agreement.

2253

- 12.12 **EXPIRATION OF POLICIES.** At least thirty calendar days prior to the expiration of each insurance policy required in Sections 12.3, 12.4, and 12.5 above, Contractor shall provide the City an insurance certificate (accompanied by all required endorsements), showing that a new or extended policy has been obtained which meets the requirements of this Agreement.
- 12.13 **REQUIREMENT TO MAINTAIN INSURANCE COVERAGE.** Contractor's maintenance of the insurance coverage required in Sections 12.3, 12.4, and 12.5 above is a material provision of this Agreement. Any failure by Contractor to maintain or renew such coverage, or to provide the City evidence of renewal, during the term of this Agreement, shall constitute a material breach of contract.

ARTICLE XIII – SUSPENSION OR DISALLOWANCE OF PAYMENTS; TERMINATION

13.1 SUSPENSION OR DISALLOWANCE OF PAYMENTS.

- 13.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:
- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
 - b) disallowing funds for all or part of the cost of the activity or action not in compliance.
- 13.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

13.2 TERMINATION FOR ANY REASON.

- 13.2.1 Notwithstanding the term of this Agreement as specified in Section 3.1 above, the City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days written notice of the termination to the other party (delivered in accordance with the provisions of Article XVII below).
- 13.2.2 In the event this Agreement is terminated pursuant to Section 13.2.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any

002254

unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, no later than the termination date of this Agreement.

13.3 TERMINATION FOR CURABLE DEFAULT.

- 13.3.1 Except as provided in Section 13.4.1 below, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor (delivered in accordance with the provisions of Article XVII below), if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.
- 13.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in Section 13.3.1 above.
- 13.3.3 In the event this Agreement is terminated pursuant to Section 13.3.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

13.4 TERMINATION FOR INCURABLE DEFAULT.

- 13.4.1 The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor (delivered in accordance with the provisions of Article XVII below), for reasons including, but not limited to, each of the following:
- a) Contractor makes material misrepresentations in regard to information furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;
 - b) Contractor, or any of its officers or directors, becomes subject to any pending court action or proceeding with respect to the performance of Contractor's obligations and/or duties under this Agreement (or any prior agreement with the City to administer the District), which may jeopardize or adversely affect the Parties' understanding of, and/or Contractor's

002255

performance of its obligations and/or duties under, this Agreement;

- c) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or
- d) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Plan that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

13.4.2 In the event this Agreement is terminated pursuant to Section 13.4.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

13.5 **CONTINUING RESPONSIBILITIES.** In the event this Agreement is terminated, Contractor shall complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Contractor shall be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination. By accepting payment for completion, as well as filing and delivering documents as called for in this Article, Contractor discharges the City of all of the City's payment obligations and liabilities under this Agreement.

13.6 **RIGHTS AND REMEDIES.** The City's termination of this Agreement shall terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

13.7 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and the City elects not to enter into a subsequent agreement with Contractor to administer the District for the following fiscal year, Contractor shall deliver to the City:

- a) all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking

002256

meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the expiration date of this Agreement; and

- b) the Annual Report, in accordance with Section 9.3.3 above.

ARTICLE XIV – INFORMAL DISPUTE RESOLUTION; ATTORNEY’S FEES; MANDATORY ASSISTANCE

14.1 **INFORMAL DISPUTE RESOLUTION.** If the City and Contractor have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice to the other party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five calendar days of the second party’s receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

14.2 **ATTORNEY’S FEES.** If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of, or based upon, this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in the action or proceeding shall be entitled to recovery of its costs and reasonable attorney’s fees, in addition to any other award made in such action or proceeding.

14.3 **MANDATORY ASSISTANCE.**

14.3.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to, the Services provided under this Agreement, upon the City’s request, Contractor, its agents, officers, and employees shall assist the City in resolving the dispute or litigation. Contractor’s assistance to the City, hereinafter referred to as “Mandatory Assistance,” includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation.

14.3.2 The City will reimburse Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and/or employees, Contractor shall reimburse the City for all fees paid to Contractor, its agents, officers, and/or employees for Mandatory Assistance.

002257
14.3.3

In providing the City with Mandatory Assistance, Contractor, its agents, officers, and/or employees may incur expenses and/or costs. Any attorney's fees Contractor may incur as a result of providing Mandatory Assistance are not reimbursable. This provision does not in any way affect the Parties' rights to seek attorney's fees under Section 14.2 above.

ARTICLE XV – INDEMNIFICATION

- 15.1 **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** Contractor shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, but not limited to, injury to Contractor's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Contractor, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required or authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. However, Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its elected officials, departments, officers, employees, representatives, and/or agents. The City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay the City for all costs related thereto, including, without limitation, attorney's fees and costs.
- 15.2 **ENFORCEMENT COSTS.** Contractor shall pay the City any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 15.1 above.

ARTICLE XVI – SUBCONTRACTORS

- 16.1 **SUBCONTRACTORS LIST AND SUBCONTRACTS.**
- 16.1.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:
- a) a completed Subcontractors List, listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement; and
 - b) a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.

002258

The City will forward the Subcontractors List to EOCP.

- 16.1.2 If, during the term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days of the date of any subcontract for such services, provide the City with each of the following:
- a) a copy of the subcontract, including the scope of work, along with a written statement describing the justification for the additional Subcontractor services, and an itemization of all costs for the additional Subcontractor services; and
 - b) an updated Subcontractors List that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional Subcontractor services.

The City will forward the updated Subcontractors List to EOCP.

- 16.1.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit C. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.
- 16.2 **REQUIRED LANGUAGE.** Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain the information described in Sections 5.1, 8.1, 8.2, 8.3, 8.4, 10.1, 10.3, 10.4, 10.6, 10.7, 10.9, and 10.11 above, and provide as follows:
- 16.2.1 Subcontractor shall obtain all insurance coverage required in Sections 12.3, 12.4, and 12.5 of the City's Agreement with Contractor, and shall maintain, in full force and effect, such insurance coverage during any and all work performed in connection with the City's Agreement with Contractor. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.
- 16.2.2 In any dispute between Contractor and Subcontractor pertaining to the City's Agreement with Contractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. Contractor shall defend and indemnify the City (as described in Section 15.1 of City's Agreement with Contractor) in any dispute between Contractor and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.
- 16.3 **CONTRACT ACTIVITY REPORT.** Within ten calendar days of a written request by the City, Contractor shall provide the City:
- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and

002259

- b) an invoice from each Subcontractor listed in the Contract Activity Report.
- 16.4 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

ARTICLE XVII – NOTICE

- 17.1 In all cases where written notice is required under this Agreement, service of such notice shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement.
- 17.2 For the purposes of this Agreement, unless otherwise modified by written amendment to this Agreement, notice to the City shall be addressed to:

City of San Diego
Economic Development Division
Attn: Scott Kessler, Deputy Director
1200 Third Ave., Suite 1400
San Diego, CA 92101

Notice to Contractor shall be addressed as specified in Exhibit A.

ARTICLE XVIII – CONFIDENTIALITY OF INFORMATION

- 18.1 All information provided by the City to Contractor in connection with this Agreement is for the sole use of Contractor. Contractor shall not release any such information to any third party, without the prior written consent of the City.
- 18.2 Section 18.1 above does not apply to information that:
- a) was publicly known, or otherwise known to Contractor, at the time the information was provided to Contractor by the City;
 - b) subsequently becomes publicly known, through no act or omission of Contractor;
 - c) becomes known to Contractor from a source or means other than the City; or
 - d) is considered a "public record," pursuant to the California Public Records Act (California Government Code sections 6250 – 6270).

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

002260

ARTICLE XIX – ACKNOWLEDGMENT OF CITY; PRODUCT ENDORSEMENTS.

19.1 ACKNOWLEDGMENT OF THE CITY IN CONTRACTOR'S DOCUMENTS.

Contractor shall acknowledge the City's financial support in all documents prepared pursuant to this Agreement and on Contractor's website, if any. Such acknowledgment shall be prominently displayed on all such documents and on Contractor's website. When any such document and/or website expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the document and/or website does not necessarily reflect the policy of the City of San Diego.

19.2 PRODUCT ENDORSEMENTS. Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.

ARTICLE XX – MISCELLANEOUS PROVISIONS

20.1 MUNICIPAL POWERS. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

20.2 GOVERNING LAW. The terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State of California. Any newly adopted rules and regulations or changes to existing rules and regulations shall become effective for the administration of this Agreement upon receipt by the City, and written notice of such newly adopted rules and regulations or changes to existing rules and regulations to Contractor.

20.3 JURISDICTION AND VENUE. The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State Court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Article XIV above.

20.4 INTEGRATED AGREEMENT. This Agreement, and the Exhibits and references incorporated into this Agreement, fully express all understandings of the Parties concerning the matters covered in this Agreement. All prior negotiations and agreements are merged into this Agreement.

20.5 CHANGES OR AMENDMENTS TO AGREEMENT. Should circumstances require that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be accomplished only as follows:

- a) a change to any of the terms or conditions of this Agreement, that does not affect the total payments herein, shall be accomplished by a written amendment to the Agreement, signed by the authorized representatives of the City and Contractor;
- b) a change which affects the total payments specified under this Agreement, shall be accomplished by a written amendment to this Agreement, provided that:

002261

- 1) if the change results in a total payment to Contractor of \$250,000 or more, then such amendment shall be approved by the City Council, and signed by the authorized representatives of the City and Contractor; or
- 2) if the change results in a total payment to Contractor of less than \$250,000, then such amendment shall be signed by the authorized representatives of the City and Contractor.

20.6 **COVENANTS AND CONDITIONS.** All provisions herein, expressed as either covenants or conditions on the part of the City or Contractor to be performed or observed, shall be deemed to be both covenants and conditions.

20.7 **NO WAIVER.** No failure of either the City or Contractor to insist upon the strict performance by the other of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any term, covenant, or condition of this Agreement, shall constitute a waiver of any such breach of such term, covenant, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every term, covenant, and condition, herein shall continue in full force and effect to any existing or subsequent breach.

20.8 **SUCCESSORS IN INTEREST.** This Agreement, and all rights, obligations, and/or duties under this Agreement, shall be in full force and effect, whether or not any party to the Agreement has been succeeded by another entity, and all rights, obligations, and/or duties under this Agreement shall be vested and binding on any party's successor in interest.

20.9 **SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

20.10 **CONFLICTS BETWEEN TERMS.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, then the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

20.11 **DRAFTING AMBIGUITIES.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.

002262

- 20.12 **SIGNING AUTHORITY.** The representative for each party signing on behalf of a corporation, partnership, joint venture, or governmental entity declares that he or she has obtained actual authority to sign on behalf of the corporation, partnership, joint venture, or entity, and shall hold the other party or parties hereto harmless if it is later determined that such authority does not exist.
- 20.13 **COUNTERPARTS.** This Agreement may be executed in counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had executed the same page.
- 20.14 **HEADINGS.** All headings in this Agreement are for convenience only, and shall not affect the interpretation of this Agreement.
- 20.15 **EXHIBITS INCORPORATED.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

IN WITNESS WHEREOF, this Agreement is executed by The City of San Diego, acting by and through its Mayor, pursuant to Resolution No. R-_____, authorizing such execution, and by Contractor.

Dated this _____ day of _____, 200__.

The City of San Diego

University Heights
Community Development Corporation

By _____
W. Downs Prior
Principal Contract Specialist

By _____
Christopher F. Milnes
Executive Director

I HEREBY APPROVE the form and legality of the foregoing Agreement this
_____ day of _____, 200__.

MICHAEL J. AGUIRRE
City Attorney

By _____
Michael D. Neumeyer
Deputy City Attorney

002263

COMMUNITY PARKING DISTRICT PROGRAM

The following Scope of Services outlines of the activities/services for the contract period of July 1, 2007 to June 30, 2008. The outline includes:

- a.) the overarching goals of the Contractor/Agency,
 - b.) b.) the program objectives (described in measurable objectives as appropriate),
 - and c.) a section summarizing operational expenses (Exhibit B).
-

University Heights CDC on behalf of the Mid-City Parking District Goals:

As an independent sub area under the Mid-City Community Parking District the goal of the University Heights CDC is to address the serious parking problems in its business and residential areas. Being an older community, the main commercial area is a combination of mixed use properties with several commercial uses that have late hours. Our goal is ameliorate conflicts between business owners and residents through our programs.

Program Objectives:

1. Continue to work with four local organizations to address parking, traffic calming and pedestrian safety issues: the University Heights organizations, Greater North Park Planning Public Facilities/Transportation Subcommittee, Uptown Planners and WalkSanDiego.
2. Organize and participate in two forums/workshops during the contract year to identify concerns and seek solutions within the community.
3. Sell approximately \$2,000 worth of parking cards.
4. Create a new website to inform residents and visitor of parking regulations and the locations where parking cards can be purchased.
 - a. This project will provide greater outreach and promotion of the City's Community Parking Program through surveys, e-newsletter, updates on parking innovations by the City, including links to other parking informational sites.
5. Publish four parking-related articles in the *University Heights News*.
6. Complete Phase II of Parking Mobility Study by The Mission Group
 - a. Study will identify angle parking along south side on the rest of Meade Avenue between North Avenue and Campus, pedestrian refuge crossings, improve pedestrian safety with crosswalks and stop signs, review of handicap parking in area whether adequate; review of parking zones to free up additional spaces; determine if it is feasible to have one lane on Mission Avenue with bike lane; identify costs associated with pedestrian pop outs on south east & north east corners of El Cajon Boulevard at Park Boulevard
7. Create a parking plan with Birney Elementary's school administration to have a monitoring program established when parents pick up and drop children at school.
8. Review the parking at the Birney Joint-Use Playing Field and collaborate with the UH Park & Recreation Council to organize a public meeting to discuss parking, traffic circulation and handicap access at Park Boulevard and Meade Avenue - the park's entry.

002264

COMMUNITY PARKING DISTRICT PROGRAM
Fiscal Year 2008

Contractor: University Heights CDC for Mid-City Parking District

Mailing Address:

Fiscal Year End: June 30, 2008

University Heights for the Mid-City Parking District: Budget FY08

Expenditure Categories	Total FY08 Organization Budgeted Expenses	
Personnel (all volunteer staff)	\$	-
Operating	\$	10,800
Outreach/Promotion	\$	250
Consultant - Street improvements studies	\$	13,725
Consultant - Website creation	\$	5,700
Program Reserve	\$	161,595
Contingency	\$	3,048
TOTAL	\$	195,118

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND
EL CAJON BOULEVARD BUSINESS IMPROVEMENT ASSOCIATION**

This Agreement [Agreement] is entered into by the City of San Diego, a municipal corporation [City] and El Cajon Boulevard Business Improvement Association [Contractor], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to Council Policy 100-18, the City established the Community Parking District Program [CPD Program], whereby communities unable to meet existing parking demands may devise and implement parking management solutions to meet their specific needs and resolve undesirable parking impacts; and

WHEREAS, the City Council designated specific geographic areas (Mid-City Community Plan Area, Golden Hill Community Plan Area, El Cajon Business Improvement District, Adams Avenue Business Improvement District, North Park Business Improvement District, and City Heights Business Improvement District) as the Mid-City Community Parking District [District]; and

WHEREAS, on December 2, 1997, the City Council adopted Resolution No. R-289522, in which the City Council designated the Mid-City Parking Meter Advisory Board as the Advisory Board for the District; and

WHEREAS, the Mid-City Parking Meter Advisory Board recommended and approved the Memorandum of Understanding that was entered into by El Cajon Boulevard Business Improvement Association, University Heights Community Development Corporation, and Greater Golden Hill Community Development Corporation for each of the non-profit corporations to act as the responsible fiscal entity to carry out the CPD Program for their respective geographic portions of the District; and

WHEREAS, pursuant to the approved Memorandum of Understanding, Contractor shall act as the responsible fiscal entity for its geographic portion of the District; and

WHEREAS, on _____, _____, the City Council adopted Resolution No. R-_____, in which the City Council approved the Implementation Plan [Plan] and Budget for FY 2008 to be carried out by Contractor;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

002266

ARTICLE I - INCORPORATION OF RECITALS

- 1.1 The Recitals set forth above are true and correct, and are hereby incorporated in full and made a part of this Agreement by this reference.

ARTICLE II - DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

- 2.1 Operating Manual – The City's "Operating Manual for Economic Development Programs" (revised 2007), which contains prescribed procedures for fiscal management and accountability of programs and/or projects receiving City and/or federal funds.
- 2.2 Plan Budget – The total amount of money allocated and available to fund this Agreement, as set forth in Exhibit B.
- 2.3 Plan Revenue – All revenue that accrues to Contractor as a result of its receipt of funds provided under this Agreement, including interest earned on these funds deposited in an interest bearing account.
- 2.4 Subcontractor – Any entity other than the City that furnishes supplies or services (other than office space, standard commercial supplies, printing services, or other administrative or operational services) to Contractor in connection with Contractor's performance of its obligations and/or duties under this Agreement.

ARTICLE III – EFFECTIVE DATE; TERM OF AGREEMENT

- 3.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of July 1, 2007 and continue for one year until June 30, 2008, unless terminated earlier in accordance with the terms of this Agreement.
- 3.2 This Agreement may be extended for up to ninety additional calendar days, pursuant to Section 20.5 below.
- 3.3 Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

ARTICLE IV – CONTRACT ADMINISTRATOR; DESIGNATED REPRESENTATIVE

- 4.1 The City's Economic Development Division [Division] is the contract administrator for this Agreement. The City will identify a designated representative for the purposes of this Agreement.
- 4.2 The City's designated representative shall communicate with Contractor on all matters related

002267

to the administration of this Agreement and Contractor's performance of its obligations and duties rendered hereunder. Contractor shall work solely under the direction of the City's designated representative in performing Contractor's obligations and duties under this Agreement.

- 4.3 When this Agreement refers to communications to or with the City, those communications shall be with the designated representative, unless the designated representative or the Agreement specifies otherwise. When this Agreement refers to an act or approval to be performed by the City, that act or approval shall be performed by the Mayor (or his designee), unless the Agreement specifies otherwise.
- 4.4 The City, at its sole discretion, may change its designated representative at any time, and if the designated representative is within the Division, shall inform Contractor, in writing, of the new designated representative within ten calendar days of the date of such change. If the new designated representative is outside the Division, and the City has knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative at least ninety calendar days prior to the date of such change. However, if the new designated representative is outside the Division, and the City does not have knowledge of the new designated representative ninety calendar days prior to the date of the change, the City will inform Contractor, in writing, of the new designated representative within five calendar days of City's knowledge of the pending change.

ARTICLE V – INDEPENDENT CONTRACTOR; ASSIGNMENT; DESIGNATED REPRESENTATIVE

- 5.1 Contractor acknowledges, and shall require each of its Subcontractors to acknowledge, that Contractor and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct Contractor concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Contractor shall follow the direction of the City concerning the end results of the performance. Contractor shall have no authority to bind the City in any manner, nor to incur any obligation, debt or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.
- 5.2 Because this Agreement is entered into by the City in reliance upon Contractor's qualifications, experience, and personnel identified, Contractor shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any assignment in violation of this Section is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee, but any such assignment shall be ineffective, null and void.

002268

- 5.3 Contractor shall identify a designated representative for the purposes of this Agreement. In the event Contractor changes its designated representative for the purposes of this Agreement, Contractor shall notify the City of the new designated representative within ten calendar days of the date of such change.

ARTICLE VI - OBLIGATIONS OF CONTRACTOR

- 6.1 Contractor shall perform the services described in the Scope of Services (Exhibit A), in accordance with the Plan Budget (Exhibit B) and all other terms and conditions of this Agreement.
- 6.2 The Scope of Services (Exhibit A) shall include measurable objectives to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.

ARTICLE VII – PLAN BUDGET AND EXPENDITURES; TOTAL PAYMENT; PLAN REVENUE

7.1 PLAN BUDGET AND EXPENDITURES.

- 7.1.1 The Plan Budget (Exhibit B) shall be in sufficient detail to provide a sound basis for the City to effectively monitor Contractor's performance under this Agreement.
- 7.1.2 Funds provided by the City to Contractor under this Agreement may be used only for staffing, education and outreach, general operations, research activities (including Subcontractor expenses), design and engineering expenses, and other reasonable and appropriate costs related to Contractor's services listed in the Scope of Services (Exhibit A) and the Plan Budget (Exhibit B). Any reimbursable expenditures incurred by Contractor shall be essential to the proper and efficient performance of those services required by this Agreement and shall fall within the prescribed limitations of this Section, the Operating Manual, and applicable laws, rules, and regulations governing this Agreement. Any other expenditures, including travel, meals, lodging, and entertainment costs, or any alcoholic beverages, will not be reimbursable under this Agreement and shall be borne solely by Contractor.
- 7.1.3 The City will not reimburse Contractor for, and Contractor shall not request reimbursement for, any expenditure that is ineligible under, this Agreement, the Plan Budget (Exhibit B), the Operating Manual, and/or Counsel Policy 100-18.
- 7.1.4 Contractor shall not use the funds provided under this Agreement in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Contractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

7.2 ADVANCES.

7.2.1 At the written request of Contractor, the City may make an advance payment to Contractor in an amount not to exceed \$5,000 to meet the cost of salaries and operating expenses during the first eight weeks of Contractor's performance under this Agreement. Repayment of such an advance may be charged by the City against the last two months of submitted reimbursement requests. The City will, at its sole discretion, either require Contractor to return any unexpended funds from the advance payment to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unexpended funds from the advance to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unexpended funds from the advance payment upon the termination date of this Agreement.

7.2.2 At the written request of Contractor, the City may, on a monthly basis, provide parking meter cards and/or deposit reload time (in dollars) onto Contractor's parking meter card reload time dispenser, with a total value not to exceed \$1,000 per month. Contractor acknowledges that any provision of parking meter cards, reload time (in dollars), and/or the proceeds from the sale of such cards and/or reload time is an advance to Contractor of funds under this Agreement, which Contractor shall only use to pay for eligible expenditures made in connection with this Agreement. The City will, at its sole discretion, either require Contractor to return any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the City within thirty calendar days of the expiration date of this Agreement, or approve and execute a journal voucher (or other action) to transfer any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time to the next year's agreement with Contractor. However, in the event this Agreement is terminated at an earlier time, Contractor shall return to the City any unsold parking meter cards and/or reload time, as well as any unexpended proceeds from the sale of such cards and/or reload time within ten calendar days of the termination date of this Agreement.

7.3 **TOTAL PAYMENT.** The total payment to be paid to Contractor under this Agreement shall not, under any circumstances, exceed \$606,968, as set forth in the Plan Budget (Exhibit B). Any amount not expended under this Agreement, shall roll over to the next fiscal year allocation of funds, subject to the City Council's annual review and approval of community parking district implementation plans and authorization of further contracts to administer the District.

002270

7.4 **ADDITIONAL FUNDING SOURCES.** If Contractor has received or does receive additional funding for the Plan from a source or sources other than the City, the use of which requires that Contractor make an accounting to, or be subject to, an audit by such other source, then Contractor shall charge Plan expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Plan that is properly chargeable to, and actually claimed for compensation or reimbursement under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

7.5 **PAYMENT SCHEDULE.**

- 7.5.1 In the event Contractor accrues cash advances and/or proceeds from the sale of parking meter cards and/or reload time (in dollars) in an amount that exceeds \$2,000, Contractor shall apply cash advances and/or proceeds from the sale of parking meter cards and/or reload time toward eligible expenditures, before requesting from the City any additional parking meter cards, reload time, or reimbursement for eligible expenditures.
- 7.5.2 Contractor shall not accrue parking meter cards, reload time (in dollars) or any combination thereof, in an amount that exceeds \$2,000.
- 7.5.3 Contractor shall request reimbursement from the City no more than once per month during the term of this Agreement.
- 7.5.4 Contractor shall, by the fifteenth day of each month, submit to the City a report (original plus one copy) documenting Contractor's activities, income, and expenditures for the preceding month, along with copies of all supporting receipts, invoices, checks, payroll statements, bank statements, and other records for services performed, as described in the Operating Manual. In addition, Contractor shall specify in the report the amount of expenditures requested for reimbursement. Contractor shall ensure that each report states: "Contractor certifies that staff time expended and expenses submitted are for services performed in accordance with the provisions of Contractor's Community Parking District Agreement with the City," and that the report is signed by an officer of Contractor.
- 7.5.5 Any expenditure contained in the report described in Section 7.5.4 above that is not consistent with the Plan Budget (Exhibit B), or is not supported with proper documentation as described in Section 7.5.4 above, shall be considered an ineligible expenditure.
- 7.5.6 Within thirty calendar days of the City's receipt of a properly completed Reimbursement Request from Contractor, the City will verify the eligibility of each expenditure described in the Reimbursement Request, and reimburse Contractor for all eligible expenditures (as described in Section 7.1.2 above), less

002271

those eligible expenditures already paid for by Contractor with the proceeds from the sale of parking meter cards and/or reload time (pursuant to Section 7.5.1 above), and less any expenditures deemed ineligible by the City but already paid for by Contractor with such proceeds.

- 7.5.7 The City will withhold the final payment to Contractor until Contractor has accounted for the cash advance, parking meter cards, reload time (in dollars), proceeds from the sale of such cards and reload time, as well as all expenditures made by Contractor in connection with this Agreement, and Contractor has submitted to the City a Final Report (and any other reports requested by the City) summarizing the services performed by Contractor pursuant to this Agreement, notwithstanding the provisions of Section 7.2 above.

7.6 DIRECT PAYMENTS

- 7.6.1 The City may, at its sole discretion, make a direct payment from Contractor's Community Parking District Revenue Fund [CPD Revenue Fund] on behalf of Contractor for expenses in excess of \$5,000 to facilitate capital improvement projects.
- 7.6.2 The City may, at the written request of Contractor, execute an interfund transfer (or other action) to effect payment from Contractor's CPD Revenue Fund to another City fund for eligible expenses, such as the purchase of parking meter cards and refill time.
- 7.6.3 The City may, at the written request of Contractor, make a direct payment from Contractor's CPD Revenue Fund to a Subcontractor for eligible expenses, provided:
- a) the amount of the direct payment exceeds fifty percent of Contractor's outstanding advance; and
 - b) the subcontract, furnished to the City, complies with the requirements set forth in Article XVI below.

- 7.7 **PLAN REVENUE.** It is anticipated that some of Contractor's services (including capital improvement projects) may generate substantial Plan Revenue. Subject to the provisions stated herein, Contractor may retain and use Plan Revenue for the following purposes:
- a) to repay any debt incurred and/or secured by the specific project that generates the revenue;
 - b) to pay for operational costs of the project;
 - c) to pay for maintenance costs of the project; and/or
 - d) to pay for any of the foregoing purposes for other services (including capital improvement projects) that are included in Contractor's Scope of Services (Exhibit A) and Plan Budget (Exhibit B).

002272

Contractor shall account for Plan Revenue separately in the account established pursuant to Section 8.2 below. Documentation of all transactions using Plan Revenue shall be included in the monthly reports and the annual audit.

- 7.8 **BUDGET ADJUSTMENTS.** Contractor shall have authority to adjust the line items of its Plan Budget (Exhibit B) by up to five percent per line without securing prior City approval. Any Plan Budget adjustment greater than five percent shall be considered an Amendment to this Agreement and requires City approval, as provided in Section 20.5 below.

ARTICLE VIII - DATA AND RECORDS

- 8.1 **GENERAL.** Contractor shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the Plan (including, but not limited to, all books, accounting records, invoices, receipts, payroll records, personnel records, and any other data and/or records pertaining to all matters covered in this Agreement or required by the Operating Manual) during the term of this Agreement.
- 8.2 **ACCOUNTING RECORDS.** Contractor shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. Within thirty calendar days of any written request by the City for such records, Contractor shall make available to the City, for review and audit, all Plan-related accounting records, documents, and any other financial data and records. Upon the City's request, Contractor shall submit exact duplicates of the originals for all requested records to the City.
- 8.3 **INSPECTION AND PHOTOCOPYING.** Upon one business day written notice by the City and as often as the City deems necessary, Contractor shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Contractor), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Plan-related data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Contractor's performance of its obligations and/or duties under this Agreement. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. The City will keep all copies of Contractor's data and records in the strictest confidence required by law.
- 8.4 **STORAGE PERIOD.** Contractor shall store, and require its Subcontractors to store, all Plan-related data and records for a period of not less than five years from the expiration date of this Agreement. All such data and records shall be kept at Contractor's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require each of its Subcontractors to permit, the City, or its authorized agents, to examine all such data and records, for the purposes described in Sections 8.2 and 8.3 above. After the storage period has expired, or all audit findings have been resolved, whichever is later, Contractor shall provide the City with thirty

002273

calendar days written notice of its intent to dispose of any Plan-related data and/or records.

- 8.5 **ORIGINAL DOCUMENTS.** Notwithstanding the foregoing, upon the expiration or termination of this Agreement, the City may request that Contractor deliver, and Contractor shall deliver, within fifteen calendar days of any such request by the City, the originals of all such data and records to the City. Contractor may retain copies of all data and records delivered to the City.
- 8.6 **OWNERSHIP OF DOCUMENTS.** Once Contractor has received any reimbursement from the City for Contractor's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed directly in connection with, or related to, Contractor's performance under this Agreement) shall be the property of the City. The City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Plan, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement.

ARTICLE IX – AUDITS; FINANCIAL DISCLOSURES; OTHER REPORTS

- 9.1 **AUDITS.** Contractor shall ensure that Annual Single Audits and Financial Statement Audits are completed by a Certified Public Accountant. Individual projects funded by the City shall be clearly identified in the audit reports, as well as the dollar amount allocated to the Plan by the City.
- 9.1.1 In accordance with the Single Audit Act of 1984 (PL 98-502) pertaining to recipients of federal funds, Contractors expending \$500,000 or more (or the current federal threshold) in total federal funding from all sources in a year, shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Contractor shall ensure that Single Audits are completed within 180 calendar days of the expiration date of this Agreement. Contractors completing audits by calendar year (rather than fiscal year) shall ensure that Single Audits are completed within 180 calendar days of December 31st. Contractor shall provide the City with a copy of the Single Audit within fifteen calendar days of Contractor's receipt of the audit.
- 9.1.2 Contractors receiving \$75,000 or more in federal, state, and/or City funds shall have Financial Statement Audits prepared in accordance with GAAP and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards [GAAS]. This audit shall include the following statements:
- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget

002274

and compared with the budgeted amounts;

- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor; and
- c) a statement certifying compliance with all terms and conditions of the City's contract with Contractor, and that all required reports and disclosures have been submitted, completed by an executive officer of Contractor.

Contractor shall provide the City a copy of the Financial Statement Audit within 150 calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

- 9.1.3 If Contractor is subject to an audit from a source other than the City, Contractor shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s).

- 9.2 **FINANCIAL DISCLOSURES.** Contractors receiving \$10,000 or more, but less than \$75,000, in federal, state, and/or City funds shall provide the City copies of true, accurate, and complete financial disclosure documentation, evidencing the financial status of Contractor's last complete fiscal year. Specifically, Contractor shall submit the following:

- a) a statement of expenditure of City funds by program, to be identified in the same expenditure classifications as contained in the final budget and compared with the budgeted amounts; and
- b) a statement of revenues and expenditures, and a balance sheet of all funds received by Contractor.

Contractor shall provide the City these documents within ninety calendar days of the end of Contractor's last complete fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Contractor.

9.3 **OTHER REPORTS**

- 9.3.1 Contractors receiving less than \$10,000 in federal, state, and/or City funds shall provide a report of how the funds were used during the contract period. Contractor shall provide the City with a copy of this report within thirty calendar days of the expiration date of this Agreement. If Contractor is also in receipt of an Annual Single Audit or Financial Statement Audit, Contractor shall submit a copy of such audit to the City within fifteen calendar days of Contractor's receipt of the audit.

- 9.3.2 During the annual budget process each fiscal year, Contractor shall submit to the City a report describing Contractor's accomplishments for the fiscal year to date,

002275

a narrative of proposed activities for the coming fiscal year, as well as a proposed budget and personnel schedule of Contractor's job classifications (identifying salaries and all benefits). Contractor shall provide the City written notice of any changes in Contractor's board (i.e., board of directors and/or advisory board to the district).

- 9.3.3 Contractor shall prepare an Annual Report, summarizing Contractor's goals, accomplishments, and expenditures for Fiscal Year 2008. The report shall be delivered to the City by November 30, 2008.

ARTICLE X – COMPLIANCE WITH LAWS AND POLICIES

- 10.1 **GENERAL.** Contractor shall comply, and require each of its Subcontractors to comply, with all applicable laws, rules, regulations, ordinances, resolutions, permits, and policies of the federal, state, and local governments, as they pertain to this Agreement. In addition, Contractor shall immediately comply, and require each of its Subcontractors to immediately comply, with all directives issued by the City, or its authorized representatives, under authority of any law, statute, ordinance, rule, or regulation.

10.2 CONFLICT OF INTEREST.

- 10.2.1 Contractor shall comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:

- a) California Government Code sections 1090 et. seq., and 81000 et. seq.;
- b) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
- c) The City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
- d) The "CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NON-PROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO" (Exhibit C).

- 10.2.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City will promptly terminate this Agreement by giving written notice thereof.

- 10.2.3 If, in performing its obligations and duties set forth in this Agreement, Contractor makes, or participates in, a "governmental decision," as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City that would otherwise be performed by a City employee holding a position specified in the City's conflict of interest regulations, Contractor shall be subject to the City's

002276

conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing Contractor's relevant financial interests.

- 10.2.3.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that Contractor is subject to the City's conflict of interest regulations. Contractor shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to the City's conflict of interest regulations.
- 10.2.3.2 If the City requires Contractor to file a statement of economic interests as a result of Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall be considered a "City Official," subject to the provisions of the City's Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.
- 10.2.4 Contractor shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.
- 10.2.5 Contractor's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- 10.2.6 If Contractor violates any conflict of interest law, or any of the provisions of Section 10.2 of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies set forth in Exhibit C. Further, any such violation shall subject Contractor to liability to the City for attorney's fees and all damages sustained as a result of the violation.

10.3 **EQUAL EMPLOYMENT OPPORTUNITY.**

- 10.3.1 Contractor shall comply, and require its Subcontractors to comply, with the City's Equal Employment Opportunity [EEO] Outreach Program, codified in

002277

San Diego Municipal Code sections 22.2701 - 22.2707. Contractor and all of its Subcontractors are individually responsible for abiding by its contents.

- 10.3.2 Contractor shall comply, and require each of its Subcontractors to comply, with Title VII of the Civil Rights Act of 1964, as amended (Executive Orders 11246, 11375, and 12086), California Fair Employment Practices Act, and any other applicable federal and state laws and/or regulations hereinafter enacted.
- 10.3.3 Contractor shall not discriminate, and require each of its Subcontractors not to discriminate, on the basis of race, gender, religion, national origin, sexual orientation, age, or disability, in performing any obligation or duty in connection with this Agreement, including, but not limited to, the provision of services, privileges, facilities, advantages, and accommodations.
- 10.3.4 Contractor, and each of its Subcontractors, shall provide equal opportunity in all employment practices.
- 10.3.5 Contractor shall submit to the City, a current Work Force Report, and if requested by the Equal Opportunity Contracting Program [EOCP] staff, an Equal Employment Opportunity Plan, as required by San Diego Municipal Code section 22.2705.
- 10.3.6 Contractor understands that compliance with the EEO provisions shall be monitored and reviewed by the City's EOCP staff.
- 10.3.7 Contractor's failure to comply with the above requirements, or its submittal of false information in response to these requirements, may result in any of the following: the withholding of progress payments until Contractor complies with the above; termination of this Agreement; debarment; and/or other sanctions, including suspension from participating in future City contracts (as a prime or Subcontractor) for a period of not less than one year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this Section shall prohibit Contractor from participating in future City contracts, until all penalties have been satisfied.
- 10.3.8 Nothing in this Section shall be interpreted to hold Contractor liable for any discriminatory practice of its Subcontractors.

10.4 NON-DISCRIMINATION IN CONTRACTING.

- 10.4.1 Contractor shall comply, and require each of its Subcontractors to comply, with the City's Nondiscrimination in Contracting Ordinance, codified in San Diego Municipal Code sections 22.3501 - 22.3517,

- 10.4.2 Contractor shall not discriminate, and require its Subcontractors not to discriminate, on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability, in the solicitation, selection, hiring, or treatment of its employees, any applicants for employment, any Subcontractors, vendors, or suppliers.
- 10.4.3 Within sixty calendar days of a request by the City, Contractor shall provide the City a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor shall fully cooperate in any investigation conducted by the City, pursuant to the City's Nondiscrimination in Contracting Ordinance, referenced above.
- 10.4.4 Violation of any provision of Section 10.4 shall be considered a material breach of this Agreement, and may result in remedies being ordered against Contractor up to, and including, termination of this Agreement, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance.
- 10.5 **LOCAL BUSINESS AND EMPLOYMENT.** Contractor acknowledges that the City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Contractor shall, to the extent reasonably possible, solicit applications for employment, as well as bids and proposals for subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Contractor shall hire qualified local residents and firms, whenever feasible.
- 10.6 **LIVING WAGE ORDINANCE.** Contractor shall comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code sections 22.4201 et seq., in performing its obligations and/or duties under this Agreement.
- 10.7 **DRUG-FREE WORKPLACE.**
- 10.7.1 Contractor shall comply, and require its Subcontractors to comply, with the City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952 and incorporated into this Agreement by this reference. Contractor shall certify, and require its Subcontractors to certify, that it shall provide a drug-free workplace, by submitting to the City a "Contractor Certification for a Drug-Free Workplace" form.
- 10.7.2 Contractor shall post in a prominent place at Contractor's office a statement setting forth its drug-free policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled

002279

substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violations of the prohibition.

- 10.7.3 Contractor shall establish a drug-free awareness program to inform employees about each of the following:
- a) The dangers of drug abuse in the workplace;
 - b) The policy of maintaining a drug-free workplace;
 - c) The availability of drug counseling, rehabilitation, and employee assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations.
- 10.7.4 Contractor shall ensure that all subcontracts in connection with this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Section 10.7 of this Agreement, as required by Sections 2A(1) – (3) of City Council Policy 100-17.
- 10.7.5 Contractor, and its Subcontractors, shall be individually responsible for their own drug-free workplace program.
- 10.8 **AMERICANS WITH DISABILITIES ACT.** Contractor shall comply with City Council Policy 100-04, as adopted by City Council Resolution R-282153, relating to the federally-mandated Americans with Disabilities Act [ADA]. Contractor, and its Subcontractors, shall be individually responsible for their own ADA program.
- 10.9 **STORM WATER POLLUTION PREVENTION.** Contractor shall comply, and require each of its Subcontractors to comply, with the City's Storm Water Management and Discharge Control Ordinance, codified in San Diego Municipal Code sections 43.0301 et seq., in performing its obligations and/or duties under this Agreement.
- 10.10 **EMPLOYMENT OF CITY STAFF.** Pursuant to City Council Policy 300-11, the City may, at its sole discretion, unilaterally and immediately terminate this Agreement if Contractor employs an individual, who, within twelve months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council, the Mayor, or former City Manager in connection with the selection of Contractor for the CPD Program.
- 10.11 **POLITICAL ACTIVITY.** Contractor shall not use, and require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or materials paid for with funds received pursuant to this Agreement, for political activity. The term, "political activity," shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state, or local government election.

- 10.12 **BROWN ACT.** Contractor shall comply with the provisions of the Ralph M. Brown Act, codified in California Government Code sections 54950-54963.
- 10.13 **PUBLIC RECORDS ACT:** Contractor shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250 – 6270, for all documents and records relating to the activities of the District.
- 10.14 **OPERATING MANUAL.** Contractor acknowledges receipt of, and shall comply with, the Operating Manual, which is hereby incorporated in full and made a part of this Agreement by this reference, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible Plan expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. If Contractor desires any change to the procedures set forth in the Operating Manual, Contractor shall request such change, in writing, and secure the City's written approval before implementing any such change.

ARTICLE XI – (reserved)

ARTICLE XII – INSURANCE

12.1 PREREQUISITES TO COMMENCEMENT OF WORK.

- 12.1.1 Prior to the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, and prior to Contractor's performance of its obligations and/or duties under this Agreement, Contractor shall complete each of the following:
- a) comply with Section 12.2 below regarding insurance companies;
 - b) obtain all insurance coverage required in Sections 12.3, 12.4, and 12.5 below;
 - c) obtain, and provide to the City, insurance certificates reflecting evidence of all insurance coverage required in Sections 12.3, 12.4, and 12.5 below; and
 - d) confirm that all insurance policies and insurance certificates contain the specific provisions required in Sections 12.3, 12.4, and 12.5 below.
- 12.1.2 Contractor shall not allow any Subcontractor to commence work on a subcontract in connection with this Agreement, unless and until all insurance required of the Subcontractor (as described in Sections 12.3, 12.4, 12.5, and 16.2.1 below) has been obtained.

- 12.2 **INSURANCE COMPANIES.** Contractor shall ensure that all insurance coverage required in Sections 12.3, 12.4, and 12.5 below is carried only by insurers that have been rated "A-, VI," or better, by the current A.M. Best Key Rating Guide, and that are licensed to do business in the State of California. The City will accept insurance provided by non-admitted "surplus lines" carriers, only if the carrier is authorized to do business in

002281

the State of California and is shown on the List of Eligible Surplus Lines Insurers.

12.3 COMMERCIAL GENERAL LIABILITY INSURANCE.

12.3.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial General Liability Insurance, written on an ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of \$1,000,000 per occurrence, subject to an annual aggregate of \$2,000,000.

12.3.2 The policy shall expressly provide that:

- a) all defense costs shall be outside the limits of the policy; and
- b) the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.

12.3.3 The policy shall be endorsed to expressly provide that:

- a) the City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds; and
- b) the policy is primary and non-contributory to any insurance that may be carried by the City.

12.3.4 There shall be no endorsement or modification of the policy limiting the scope of coverage for insured vs. insured claims, or for contractual liability.

12.4 COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.

12.4.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Commercial Automobile Liability Insurance for all of Contractor's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence.

12.4.2 The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail

12.4.3 The policy shall be endorsed to expressly provide that The City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds.

12.5 WORKERS' COMPENSATION INSURANCE.

12.5.1 At all times during the term of this Agreement, Contractor shall maintain, in full force and effect, Workers' Compensation Insurance for all of Contractor's employees who are subject to this Agreement, to the extent required by the State of California, providing a minimum of \$1,000,000 of employers' liability coverage.

12.5.2 The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail

12.5.3 The policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.

12.6 **ENDORSEMENTS.** All endorsements required under Sections 12.3.3, 12.4.3, and 12.5.3 above shall be in full force and effect for the entire term of this Agreement.

12.7 **CITY'S RIGHT TO REQUEST AND REVIEW CONTRACTOR'S INSURANCE POLICIES.** The City reserves its right to request, and Contractor shall immediately submit to the City upon the City's request, copies of any policy required in Sections 12.3, 12.4, and 12.5 above, and its right to review, at any time, Contractor's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are sufficient, given the level of risk associated with the services described in the Scope of Services (Exhibit A). If the City determines that any such insurance coverage, limits, deductibles, and/or self-insured retentions is insufficient, the City and Contractor shall amend this Agreement to increase such insurance coverage, limits, deductibles, and/or self-insured retentions to a sufficient level, as determined by the City, and Contractor shall comply with any such amendment.

12.8 **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** All deductibles and self-insured retentions on any policy shall be the responsibility of Contractor, and shall be disclosed on the insurance certificates and acceptable to the City at the time the required evidence of insurance is provided to the City.

12.9 **CONTRACTOR'S LIABILITY NOT LIMITED TO INSURANCE COVERAGE.** Contractor's liability, including, but not limited to, Contractor's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Article.

12.10 **MODIFICATIONS AFFECTING CITY'S EXPOSURE TO LOSS.** Contractor shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of this Agreement

12.11 **ADDITIONAL INSURANCE.** Contractor may obtain additional insurance not required by this Agreement.

002283

12.12 **EXPIRATION OF POLICIES.** At least thirty calendar days prior to the expiration of each insurance policy required in Sections 12.3, 12.4, and 12.5 above, Contractor shall provide the City an insurance certificate (accompanied by all required endorsements), showing that a new or extended policy has been obtained which meets the requirements of this Agreement.

12.13 **REQUIREMENT TO MAINTAIN INSURANCE COVERAGE.** Contractor's maintenance of the insurance coverage required in Sections 12.3, 12.4, and 12.5 above is a material provision of this Agreement. Any failure by Contractor to maintain or renew such coverage, or to provide the City evidence of renewal, during the term of this Agreement, shall constitute a material breach of contract.

ARTICLE XIII - SUSPENSION OR DISALLOWANCE OF PAYMENTS; TERMINATION

13.1 SUSPENSION OR DISALLOWANCE OF PAYMENTS.

13.1.1 Other provisions of this Agreement notwithstanding, if Contractor fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:

- a) suspending one or more payments to Contractor, pending correction of the activity or action not in compliance; and/or
- b) disallowing funds for all or part of the cost of the activity or action not in compliance.

13.1.2 If the City notifies Contractor that the City has suspended payments or disallowed funds, Contractor shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

13.2 TERMINATION FOR ANY REASON.

13.2.1 Notwithstanding the term of this Agreement as specified in Section 3.1 above, the City or Contractor may terminate this Agreement for any reason at any time during the term of this Agreement upon sixty calendar days written notice of the termination to the other party (delivered in accordance with the provisions of Article XVII below).

13.2.2 In the event this Agreement is terminated pursuant to Section 13.2.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any

002284

unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, no later than the termination date of this Agreement.

13.3 TERMINATION FOR CURABLE DEFAULT.

- 13.3.1 Except as provided in Section 13.4.1 below, the City, at its sole discretion, may terminate this Agreement upon thirty calendar days written notice to Contractor (delivered in accordance with the provisions of Article XVII below), if Contractor fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Contractor's default. If Contractor fails to cure the default within thirty calendar days of the date Contractor receives the written notice, the City may immediately terminate this Agreement.
- 13.3.2 The City reserves the right to suspend one or more payments to Contractor during the thirty calendar day notice period described in Section 13.3.1 above.
- 13.3.3 In the event this Agreement is terminated pursuant to Section 13.3.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

13.4 TERMINATION FOR INCURABLE DEFAULT.

- 13.4.1 The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Contractor (delivered in accordance with the provisions of Article XVII below), for reasons including, but not limited to, each of the following:
- a) Contractor makes material misrepresentations in regard to information furnished to the City pursuant to this Agreement, regardless of whether Contractor had knowledge or intent with respect to the misrepresentation;
 - b) Contractor, or any of its officers or directors, becomes subject to any pending court action or proceeding with respect to the performance of Contractor's obligations and/or duties under this Agreement (or any prior agreement with the City to administer the District), which may jeopardize or adversely affect the Parties' understanding of, and/or Contractor's

performance of its obligations and/or duties under, this Agreement;

- c) Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or
- d) Contractor is unable or unwilling to comply with any additional terms or conditions concerning the Plan that may be required by newly enacted (or amended) federal, state, and/or local laws, rules, regulations, and/or other directives.

13.4.2 In the event this Agreement is terminated pursuant to Section 13.4.1 above, Contractor shall deliver to the City all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or duties under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the termination date of this Agreement.

13.5 **CONTINUING RESPONSIBILITIES.** In the event this Agreement is terminated, Contractor shall complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Contractor shall be entitled to fair and reasonable compensation for the services performed by Contractor before the effective date of termination. By accepting payment for completion, as well as filing and delivering documents as called for in this Article, Contractor discharges the City of all of the City's payment obligations and liabilities under this Agreement.

13.6 **RIGHTS AND REMEDIES.** The City's termination of this Agreement shall terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Contractor.

13.7 **NO SUBSEQUENT AGREEMENT.** In the event this Agreement expires and the City elects not to enter into a subsequent agreement with Contractor to administer the District for the following fiscal year, Contractor shall deliver to the City:

- a) all books, data, records, work product, leases, and agreements prepared and/or completed directly in connection with, or related to, Contractor's performance of its obligations and/or under this Agreement, as well as any unexpended funds from the advance payment, any unsold parking

002286

meter cards and/or reload time (in dollars), any unexpended proceeds from the sale of such cards and/or reload time, any accounts receivable attributable to the use of any funds provided under this Agreement, any vehicles and/or equipment, and any other assets of the District, upon the expiration date of this Agreement; and

- b) the Annual Report, in accordance with Section 9.3.3 above.

ARTICLE XIV – INFORMAL DISPUTE RESOLUTION; ATTORNEY’S FEES; MANDATORY ASSISTANCE

14.1 **INFORMAL DISPUTE RESOLUTION.** If the City and Contractor have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice to the other party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five calendar days of the second party’s receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

14.2 **ATTORNEY’S FEES.** If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of, or based upon, this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in the action or proceeding shall be entitled to recovery of its costs and reasonable attorney’s fees, in addition to any other award made in such action or proceeding.

14.3 **MANDATORY ASSISTANCE.**

14.3.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to, the Services provided under this Agreement, upon the City’s request, Contractor, its agents, officers, and employees shall assist the City in resolving the dispute or litigation. Contractor’s assistance to the City, hereinafter referred to as “Mandatory Assistance,” includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation.

14.3.2 The City will reimburse Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and/or employees, Contractor shall reimburse the City for all fees paid to Contractor, its agents, officers, and/or employees for Mandatory Assistance.

002287

- 14.3.3 In providing the City with Mandatory Assistance, Contractor, its agents, officers, and/or employees may incur expenses and/or costs. Any attorney's fees Contractor may incur as a result of providing Mandatory Assistance are not reimbursable. This provision does not in any way affect the Parties' rights to seek attorney's fees under Section 14.2 above.

ARTICLE XV – INDEMNIFICATION

- 15.1 **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** Contractor shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, but not limited to, injury to Contractor's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Contractor, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required or authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. However, Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its elected officials, departments, officers, employees, representatives, and/or agents. The City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Contractor shall pay the City for all costs related thereto, including, without limitation, attorney's fees and costs.
- 15.2 **ENFORCEMENT COSTS.** Contractor shall pay the City any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 15.1 above.

ARTICLE XVI – SUBCONTRACTORS

- 16.1 **SUBCONTRACTORS LIST AND SUBCONTRACTS.**
- 16.1.1 On or before the date this Agreement is executed by the Parties, Contractor shall provide the City with each of the following:
- a) a completed Subcontractors List, listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement; and
 - b) a copy of all subcontracts entered into in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and an itemization of all costs for the Subcontractor services.

The City will forward the Subcontractors List to EOCP.

- 16.1.2 If, during the term of this Agreement, Contractor identifies a need for additional Subcontractor services, Contractor shall, within ten calendar days of the date of any subcontract for such services, provide the City with each of the following:
- a) a copy of the subcontract, including the scope of work, along with a written statement describing the justification for the additional Subcontractor services, and an itemization of all costs for the additional Subcontractor services; and
 - b) an updated Subcontractors List that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional Subcontractor services.

The City will forward the updated Subcontractors List to EOCP.

- 16.1.3 Contractor shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit C. Contractor shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any written request by the City.
- 16.2 **REQUIRED LANGUAGE.** Contractor shall ensure that all subcontracts entered into in connection with this Agreement contain the information described in Sections 5.1, 8.1, 8.2, 8.3, 8.4, 10.1, 10.3, 10.4, 10.6, 10.7, 10.9, and 10.11 above, and provide as follows:
- 16.2.1 Subcontractor shall obtain all insurance coverage required in Sections 12.3, 12.4, and 12.5 of the City's Agreement with Contractor, and shall maintain, in full force and effect, such insurance coverage during any and all work performed in connection with the City's Agreement with Contractor. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.
- 16.2.2 In any dispute between Contractor and Subcontractor pertaining to the City's Agreement with Contractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. Contractor shall defend and indemnify the City (as described in Section 15.1 of City's Agreement with Contractor) in any dispute between Contractor and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.
- 16.3 **CONTRACT ACTIVITY REPORT.** Within ten calendar days of a written request by the City, Contractor shall provide the City:
- a) statistical information (as described in the City's Contract Activity Report), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and

- b) an invoice from each Subcontractor listed in the Contract Activity Report.
- 16.4 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** Contractor shall not employ, award any contract to, engage the services of, or fund any Subcontractor during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Contractor has been noticed of such debarment, suspension, or ineligibility.

ARTICLE XVII – NOTICE

- 17.1 In all cases where written notice is required under this Agreement, service of such notice shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement.
- 17.2 For the purposes of this Agreement, unless otherwise modified by written amendment to this Agreement, notice to the City shall be addressed to:

City of San Diego
Economic Development Division
Attn: Scott Kessler, Deputy Director
1200 Third Ave., Suite 1400
San Diego, CA 92101

Notice to Contractor shall be addressed as specified in Exhibit A.

ARTICLE XVIII – CONFIDENTIALITY OF INFORMATION

- 18.1 All information provided by the City to Contractor in connection with this Agreement is for the sole use of Contractor. Contractor shall not release any such information to any third party, without the prior written consent of the City.
- 18.2 Section 18.1 above does not apply to information that:
- a) was publicly known, or otherwise known to Contractor, at the time the information was provided to Contractor by the City;
 - b) subsequently becomes publicly known, through no act or omission of Contractor;
 - c) becomes known to Contractor from a source or means other than the City; or
 - d) is considered a “public record,” pursuant to the California Public Records Act (California Government Code sections 6250 – 6270).

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

ARTICLE XIX – ACKNOWLEDGMENT OF CITY; PRODUCT ENDORSEMENTS.**19.1 ACKNOWLEDGMENT OF THE CITY IN CONTRACTOR'S DOCUMENTS.**

Contractor shall acknowledge the City's financial support in all documents prepared pursuant to this Agreement and on Contractor's website, if any. Such acknowledgment shall be prominently displayed on all such documents and on Contractor's website. When any such document and/or website expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the document and/or website does not necessarily reflect the policy of the City of San Diego.

19.2 PRODUCT ENDORSEMENTS. Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any promotional material or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.**ARTICLE XX – MISCELLANEOUS PROVISIONS****20.1 MUNICIPAL POWERS.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.**20.2 GOVERNING LAW.** The terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State of California. Any newly adopted rules and regulations or changes to existing rules and regulations shall become effective for the administration of this Agreement upon receipt by the City, and written notice of such newly adopted rules and regulations or changes to existing rules and regulations to Contractor.**20.3 JURISDICTION AND VENUE.** The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State Court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Article XIV above.**20.4 INTEGRATED AGREEMENT.** This Agreement, and the Exhibits and references incorporated into this Agreement, fully express all understandings of the Parties concerning the matters covered in this Agreement. All prior negotiations and agreements are merged into this Agreement.**20.5 CHANGES OR AMENDMENTS TO AGREEMENT.** Should circumstances require that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be accomplished only as follows:

- a) a change to any of the terms or conditions of this Agreement, that does not affect the total payments herein, shall be accomplished by a written amendment to the Agreement, signed by the authorized representatives of the City and Contractor;
- b) a change which affects the total payments specified under this Agreement, shall be accomplished by a written amendment to this Agreement, provided that:

002291

- 1) if the change results in a total payment to Contractor of \$250,000 or more, then such amendment shall be approved by the City Council, and signed by the authorized representatives of the City and Contractor; or
- 2) if the change results in a total payment to Contractor of less than \$250,000, then such amendment shall be signed by the authorized representatives of the City and Contractor.

20.6 **COVENANTS AND CONDITIONS.** All provisions herein, expressed as either covenants or conditions on the part of the City or Contractor to be performed or observed, shall be deemed to be both covenants and conditions.

20.7 **NO WAIVER.** No failure of either the City or Contractor to insist upon the strict performance by the other of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any term, covenant, or condition of this Agreement, shall constitute a waiver of any such breach of such term, covenant, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every term, covenant, and condition, herein shall continue in full force and effect to any existing or subsequent breach.

20.8 **SUCCESSORS IN INTEREST.** This Agreement, and all rights, obligations, and/or duties under this Agreement, shall be in full force and effect, whether or not any party to the Agreement has been succeeded by another entity, and all rights, obligations, and/or duties under this Agreement shall be vested and binding on any party's successor in interest.

20.9 **SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

20.10 **CONFLICTS BETWEEN TERMS.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, then the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

20.11 **DRAFTING AMBIGUITIES.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.

002292

- 20.12 **SIGNING AUTHORITY.** The representative for each party signing on behalf of a corporation, partnership, joint venture, or governmental entity declares that he or she has obtained actual authority to sign on behalf of the corporation, partnership, joint venture, or entity, and shall hold the other party or parties hereto harmless if it is later determined that such authority does not exist.
- 20.13 **COUNTERPARTS.** This Agreement may be executed in counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had executed the same page.
- 20.14 **HEADINGS.** All headings in this Agreement are for convenience only, and shall not affect the interpretation of this Agreement.
- 20.15 **EXHIBITS INCORPORATED.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

IN WITNESS WHEREOF, this Agreement is executed by The City of San Diego, acting by and through its Mayor, pursuant to Resolution No. R-_____, authorizing such execution, and by Contractor.

Dated this _____ day of _____, 200__.

The City of San Diego

El Cajon Boulevard
Business Improvement Association

By _____
W. Downs Prior
Principal Contract Specialist

By _____
Jacquelyn R. O'Connor
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this
_____ day of _____, 200__.

MICHAEL J. AGUIRRE
City Attorney

By _____
Michael D. Neumeyer
Deputy City Attorney

002293

COMMUNITY PARKING DISTRICT PROGRAM

The following Scope of Services outlines of the activities/services for the contract period of July 1, 2007 to June 30, 2008. The outline includes:

- a.) the overarching goals of the Contractor/Agency,
 - b.) the program objectives (described in measurable objectives as appropriate),
 - and c.) a section summarizing operational expenses (Exhibit B).
-

El Cajon Boulevard BIA on behalf of the Mid-City Parking District Goals:

To improve the Mid-City community by increasing parking options, ensuring safe, friendly streets, and promoting economic revitalization. And foster community through creative collaborations that enhance the vitality of our businesses, sustain the health of our residential community, and promote a model cohesive neighborhood.

Program Objectives:**I. Complete 5 Angle Parking and Parking Impact Assessment Reports:**

1. Complete one report that identifies approximately 12 blocks where the streets meet current city standards that would accommodate angle parking without diminishing safety and security. The report will be delivered by November 30, 2007.
 - a. The Contractor will evaluate street widths and curbcut locations to identify appropriate sites for the use of angle parking. The Contractor will seek community support of adjacent residents and property owners for its installation through mailings and public meetings.
2. Complete one report that identifies the three locations and the parking gains associated with converting to 90 degree (head-in) parking. The report will be delivered by November 30, 2007.
 - a. The Contractor will work with the City to review angle parking standards, including 90 degree (head-in) parking opportunities. The review will consist of analysis of parking gains by converting to angled or 90 degree parking and demonstration of best practices used in other municipalities around the country. The Contractor will seek three locations for pilot projects using standards alternative to current City parking standards. The Contractor will also negotiate with the City for a waiver of traditional City Standards and the projects will be implemented pending City approval.
3. Complete one report that will evaluate and recommend meter time limits and hourly rates.
 - a. The Contractor will evaluate the meters along El Cajon Boulevard for purposes of identifying daytime and evening parking utilization, and recommend locations for additional use of metered parking and time limited parking. The report will be delivered by January 1, 2008.
4. Complete one report that identifies and recommends locations for traffic calming measures. The report will be delivered by the end of the contract period.
 - a. locations will be considered for crosswalk enhancements (pop outs),
 - b. 2 locations for electronic speed indicators,
 - c. 12 locations for pedestrian countdown indicators.

002294

5. Complete one feasibility study that establishes a method of partially replacing the required off-street space requirement for changes in use of business properties, and for certain new infill development projects with an in-lieu fee option in order to facilitate economic development opportunities. The Contractor will work with City staff on ordinance language and will recommend options for its use.

II. Implement 4 Types of Public Information Activities

1. Newsletters - Produce 4 printed outreach pieces during the year to be distributed to approximately 1,200 residents and business owners within the district borders, explaining the components of its parking enhancement program.
2. Outreach – The Contractor will attend approximately 2 meetings each month with community-based organizations within the bounds of the Mid-City District to communicate issues related to parking impacts, and seek written feedback.
3. Surveys - The Contractor will produce and distribute 2 resident and business surveys seeking feedback regarding parking problems and potential solutions. A report on each survey will be completed by the end of the contract period.
4. Website - The Contractor will continue to maintain the website as a repository for parking related matters.

III. Pedestrian and Transit Enhancement

1. Pedestrian Master Plan – Complete one report that recommends methods of enhancing pedestrian movement and maximizing on-street parking. The Contractor will evaluate the existing non-motorized pedestrian plan for the 40th Street corridor adjacent to the route 15 freeway. The report will be delivered by the end of the contract period.
2. Bus Rapid Transit – The Contractor will coordinate and attend meetings with public transit agencies including the Metropolitan Transit System (MTS) and the San Diego Association of Governments (SANDAG) in evaluating and implementing transit enhancements including the Boulevard Showcase BRT, Route 15 Centerline BRT, and the development of the proposed transit infrastructure at the Boulevard Transit Plaza, and will provide written comments as appropriate. These comments are part of the Contractor's files and are available to the City by request. The Contractor will also develop and maintain a website (centerlinetransit.com) that will allow community members to keep updated and stay involved with the centerline project.

IV. Complete 5 types of Public Improvements

Contractor will recommend revenue allocations and pay the City Transportation Engineering Division to complete the following public improvement projects by the end of the contract period:

- 1) 12 pedestrian countdown indicators,
- 2) 2 electronic speed indicators,
- 3) 6 unused driveway closures, and
- 4) Installation of 40 additional parking meters.
- 5) Complete the painting of 25 utility boxes. The Contractor will continue a public art program via the decorative and thematic painting utility boxes along the El Cajon Boulevard public right-of-way.

002295

COMMUNITY PARKING DISTRICT PROGRAM
Fiscal Year 2008

Contractor: El Cajon for Mid-City Community Parking District
Mailing Address: 3727 El Cajon Boulevard San Diego, CA 92105
Fiscal Year End: June 30, 2008

El Cajon BIA for Mid-City Parking District: Budget Summary FY08

Expenditure Categories	Total FY08 Organization Budgeted Expenses
Parking Enhancements	
Angle Parking Assessment	\$18,000
Parking Impact Assessment	\$24,000
Traffic Calming Assessment	\$6,000
In-Lieu Fee Ordinance	\$6,000
Subtotal	\$54,000
Public Information	
Newsletters	\$12,000
Outreach	\$6,000
Surveys	\$6,000
Website	\$5,000
Subtotal	\$29,000
Pedestrian and Transit Enhancement	
Pedestrian Master Plan	\$60,000
Bus Rapid Transit	\$9,000
Subtotal	\$69,000
Public Improvements	
Crosswalk Enhancements	\$10,000
12 Countdown Indicators	\$24,000
2 Electronic Speed Indicators	\$24,000
6 Driveway Closures	\$60,000
40 Parking Meters	\$32,000
12 Utility Box paintings @ \$600	\$30,000
Subtotal	\$180,000
Administration	
Staff	\$12,000
Technical Assistance	\$24,000
Non-personnel	\$12,000
<i>(rent, utilities, supplies, insurance)</i>	
Subtotal	\$48,000
Total	<u>\$380,000.00</u>
Contingency	<u>\$40,000.00</u>
Reserve (Future Capital Improvements)	<u>\$140,000.00</u>
GRAND TOTAL	<u>\$560,000.00</u>